

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.2**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Sustainable Streets – Transportation Engineering

**BRIEF DESCRIPTION:**

Approving various routine traffic and parking modifications as consent calendar items per the attached resolution.

**SUMMARY:**

- Under Proposition A, the SFMTA Board of Directors has authority to adopt parking and traffic regulations changes

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM \_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO \_\_\_\_\_ Tom Folks

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

## **PURPOSE**

To approve various routine traffic and parking modifications.

### **Benefit to the SFMTA 2008 – 2012 Strategic Plan:**

## **GOAL**

Goal 1 - Customer Focus: To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy

Objective 1.1 - Improve safety and security across all modes of transportation

Goal 2 - System Performance: To get customers where they want to go, when they want to be there

Objective 2.4 - Reduce congestion through major corridors

Objective 2.5 - Manage parking supply to align with SFMTA and community goals

## **ITEMS:**

- A. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) – Diamond Heights Boulevard, east side, from Addison Street to 80 feet northerly. **PH 10/30/09 Requested by SFMTA**
- B. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) – Diamond Heights Boulevard, east side, from Diamond Street (northern intersection with Diamond Heights Boulevard) to 80 feet northerly. **PH 10/30/09 Requested by SFMTA**
- C. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, east side, from Gold Mine Drive (northern intersection with Diamond Heights Boulevard) to 100 feet southerly. **PH 10/30/09 Requested by SFMTA**
- D. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, east side, from Duncan Street (southern intersection with Diamond Heights Boulevard) to 100 feet southerly. **PH 10/30/09 Requested by SFMTA**
- E. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, east side, from Duncan Street (southern intersection with Diamond Heights Boulevard) to 100 feet southerly. **PH 10/30/09 Requested by SFMTA**
- F. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, west side, from Gold Mine Drive (northern intersection with Diamond Heights Boulevard) to 100 feet northerly. **PH 10/30/09 Requested by SFMTA**
- G. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, west side, from Diamond Street to 100 feet northerly. **PH 10/30/09 Requested by SFMTA**
- H. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, west side, from Gold Mine Drive (southern intersection with Diamond Height Boulevard) to 100 feet northerly. **PH 10/30/09 Requested by SFMTA**

- I. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, west side, from Berkeley Way (northern intersection with Diamond Heights Boulevard) to 80 feet southerly. **PH 10/30/09 Requested by SFMTA**

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The San Francisco Municipal Transportation Agency has received a request, or identified a need for traffic modifications as follows:

- A. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) – Diamond Heights Boulevard, east side, from Addison Street to 80 feet northerly.
- B. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) – Diamond Heights Boulevard, east side, from Diamond Street (northern intersection with Diamond Heights Boulevard) to 80 feet northerly.
- C. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, east side, from Gold Mine Drive (northern intersection with Diamond Heights Boulevard) to 100 feet southerly.
- D. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, east side, from Duncan Street (southern intersection with Diamond Heights Boulevard) to 100 feet southerly.
- E. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, east side, from Duncan Street (southern intersection with Diamond Heights Boulevard) to 100 feet southerly.
- F. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, west side, from Gold Mine Drive (northern intersection with Diamond Heights Boulevard) to 100 feet northerly.
- G. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, west side, from Diamond Street to 100 feet northerly.
- H. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, west side, from Gold Mine Drive (southern intersection with Diamond Height Boulevard) to 100 feet northerly.
- I. ESTABLISH - MUNI BUS ZONE (REPLACE EXISTING FLAG STOP) - Diamond Heights Boulevard, west side, from Berkeley Way (northern intersection with Diamond Heights Boulevard) to 80 feet southerly.

WHEREAS, The public has been notified about the proposed modifications and has been given the opportunity to comment on those modifications through the public hearing process; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors, upon recommendation of the Executive Director/CEO and the Director of Transportation Engineering, does hereby approve the changes.

I hereby certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of \_\_\_\_\_

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**THIS PRINT COVERS CALENDAR ITEM NO.:** 10.3

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Capital Programs and Construction

**BRIEF DESCRIPTION:**

Authorizing the award of San Francisco Municipal Transportation Agency Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation, to Synergy Project Management, Inc., located at 150 Executive Park Boulevard, Suite 4750, San Francisco, CA 94134, as the lowest responsive and responsible bidder, in the amount of \$9,273,939.00.

**SUMMARY:**

- On August 4, 2009, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No. 09-130, to authorize the advertising of the SFMTA Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation.
- This Contract relocates utilities to accommodate the future Central Subway Moscone Station and Portal structure.
- The engineers estimate for this work was stated at \$9,759,944.
- Four bids were received and publicly opened on October 22, 2009. Staff recommends awarding Contract No. 1250 to Synergy Project Management, Inc. in the amount of \$9,273,939.00, as responsible bidder that submitted the lowest responsive bid.
- Funding for construction services under this Contract is furnished from federal, state and local sources.

**ENCLOSURES:**

1. SFMTA Board of Directors Resolution
2. Project Budget & Financial Plan

**APPROVALS:**

**DATE:**

DEPUTY OF DIVISION

PREPARING ITEM: \_\_\_\_\_

FINANCE (IF APPLICABLE): \_\_\_\_\_

EXECUTIVE DIRECTOR/CEO: \_\_\_\_\_

SECRETARY: \_\_\_\_\_

ADOPTED RESOLUTION TO BE RETURNED TO: Contracting Section  
Attn: Gigi Pabros

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

## **PAGE 2.**

### **PURPOSE**

Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation, will relocate the majority of underground utilities along the Central Subway alignment for the Moscone Station and the tunnel portal and will provide additional foundation support for several adjacent private structures in preparation for the construction of the Central Subway Project. Purpose of this calendar item is to award this contract to the lowest responsive and responsible bidder.

### **GOAL**

The Central Subway Project, supported by Contract No. 1250, is consistent with the SFMTA Strategic Plan in the following goals and objectives:

Goal 1 – Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy

Objective 1.3 Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Objective 1.5 Increase percentage of trip using more sustainable modes

Goal 2 – System Performance: To get customers where they want to go, when they want to be there

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.4 Reduce congestion through major corridors

Goal 3 – External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry

Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups

Objective 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits

Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life

Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation

Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization

Objective 4.2 Ensure efficient and effective use of resources

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## **DESCRIPTION**

### **Background:**

The SFMTA's Third Street Light Rail Transit (LRT) Project is the most significant capital investment in generations for the seventh largest transit system in the nation. Phase 1 of the 6.9-mile, two-phase project began revenue service in April 2007, restoring light rail service to the heavily transit-dependent Third Street corridor in eastern San Francisco for the first time in 50 years.

The Central Subway Project, Phase 2 of the Third Street Light Rail Transit Project, will provide rail service to the Financial District and Chinatown, the most densely developed area of San Francisco. The new light rail line will serve regional destinations, such as Union Square, Moscone Convention Center, Yerba Buena and AT&T Park, as well as connect directly to BART and Caltrain, the Bay Area's two largest regional commuter rail services.

The Central Subway Project is the second phase of the Third Street Light Rail Project. Both phases of the project were initially evaluated under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), in an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) that was certified in 1998. On January 19, 1999 the Public Transportation Commission approved Resolution No. 99-009 which adopted the environmental findings for the Project, including mitigation measures set forth in the 1998 FEIS/FEIR and Mitigation Monitoring Report. The Federal Transit Administration (FTA) issued a Record of Decision on the 1998 FEIS/FEIR for the IOS on March 16, 1999. Revenue operation of Phase 1 of the Third Street Light Rail, extending from Bayshore Boulevard to Fourth and King streets, began in April 2007.

The Draft Supplemental EIS/EIR was issued on October 17, 2007 for a 55-day public review period. During the public comment period, a series of three publicized community meetings were held in the Chinatown, Union Square and South of Market areas to provide information to the public about the Draft SEIS/SEIR released for public review. These informational meetings were well attended and the public was provided with opportunities to view renderings and to talk with project staff about the project and the environmental process. The San Francisco Planning Department conducted a public hearing on the Supplemental EIS/EIR on November 15, 2007.

On February 19, 2008 the SFMTA Board of Directors adopted Resolution No. 08-029, selecting the Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street, as the Locally Preferred Alternative, and authorizing the Executive Director/CEO to carry forward this selection in the Final SEIS/SEIR.

Environmental appeals were filed and heard by the Board of Supervisors on September 16, 2008. The Board of Supervisors voted unanimously to uphold the Environmental findings. No legal challenges under CEQA or NEPA were filed, and the time to file such



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challenges has expired.

The notice for the Final SEIR appeared in the Federal Register on October 3, 2008 and the 30-day waiting period has elapsed. The FTA issued the Record of Decision announcing the completion of the Central Subway environmental process on November 16, 2008.

### **Current Status:**

The Central Subway design consists of a short portion of in-street, surface light rail in the southern portion of the system before transitioning into subway operation for most of the alignment. Twin bore tunnels are proposed for the subway with three subway stations serving the Moscone/Yerba Buena, Union Square/Market Street and Chinatown areas. The Union Square/Market Street Station will interconnect with the existing BART/Muni Powell Street Station. A deep tunneling approach using tunnel boring machines (TBMs) is proposed to reduce surface disruption during construction, to create a more direct alignment and to shorten the construction period. The Central Subway tunnels will pass under the existing BART/Muni Market Street subway tunnels with the rail over 95 feet below the ground surface. Most of the alignment will be located under existing street right-of-way with limited required underground easements. The stations will have center-platforms with passenger end-loading and are designed to accommodate high-floor two-car trains. Whenever feasible, off-street properties have been identified for the primary station access with transit oriented development opportunities at the Moscone/Yerba Buena and Chinatown stations.

Construction methods consist of TBM construction of the running tunnels which will pass through differing geological formations, including bay mud, alluvium, Colma formation, and Franciscan bedrock. Subway station construction methods will vary. The Moscone/Yerba Buena Station will be constructed using traditional, top-down cut-and-cover construction. The Union Square/Market Street Station is located in a very constricted area and will most likely be constructed using a combination of cut and cover and mined sequential excavation methods. Chinatown Station, also in a very constricted area, will be constructed using mined sequential excavation.

The project has completed the preliminary engineering design. Seven major construction contracts are planned to implement the project. The project construction is scheduled to begin in 2010 and to be completed in 2018.

### **Purpose and Scope of Contract:**

SFMTA Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation is the first of seven contracts for the construction of the Central Subway Project. Work under the contract will relocate the majority of existing utilities and will provide additional foundation support for several private structures adjacent to the proposed Moscone Station and the tunnel portal on Fourth Street between Bryant and Harrison streets.

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Both the Moscone Station and the tunnel portal will be constructed under the Fourth Street roadway using a top-down construction method that requires a large opening in the street. Within the street, public and private utilities are imbedded under the roadway and sidewalks. The relocation of the utilities from the street to under the sidewalks will permit access to construct the station and portal. Public utilities include sewer, water distribution, auxiliary water supply, traffic signals, street lighting, electric, gas, telephone and television cable. Private building utilities include a water line. The majority of utilities will be relocated outside of the planned footprints of the station and tunnel portal. Relocation of remaining utilities will be accomplished under subsequent contract to be issued to construct the Moscone Station and the tunnel.

The contract will include relocation and modification of water lines, including a private building water line at 475 Fourth Street adjacent to the portal. Access to the building is required to perform the work. The contract also includes construction of supports (underpinning) designed to protect and limit settlement of buildings at 801-805 Howard Street and 401 Fourth Street, which are adjacent to the Moscone Station and tunnel portal construction sites. The underpinning will be performed from the exterior of the affected buildings, but the contractor will require access to the buildings. The term of the Contract described in the Special Provisions is 374 calendar days that would be increased by an additional 84 calendar days should the SFMTA elect to exercise a bid option for additional sewer improvements for a total contract term of 458 calendar days.

**Bids Received:**

On October 22, 2009 SFMTA Capital Programs and Construction Division received four bid proposals. Immediately before opening of the Bids, SFMTA announced the construction budget in the amount at \$9,759,944.

The four bid proposals received were as follows:

<b>Bidder</b>	<b>Base Bid</b>	<b>Optional Items</b>	<b>Total Base Bid + Optional Items</b>
Synergy Project Management, Inc. 150 Executive Park Blvd., Suite 4750 San Francisco, CA 94134	\$8,874,514	\$399,425	\$9,273,939
NTK Construction, Inc. 501 Cesar Chavez St., Suite 123 San Francisco, CA 94124	\$9,017,785	\$584,300	\$9,602,085
Ranger Pipeline Inc. P.O. Box 24109 San Francisco, CA 94126	\$10,259,343	\$492,075	\$10,751,418
Gordon N. Ball, Inc. 333 Camille Ave. Alamo, CA 94507	\$10,969,260	\$565,000	\$11,534,260

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The bid document specifies that the contract, if awarded, will be awarded to the responsible bidder that submits the lowest responsive bid based on the lowest Total Bid Price including all options.

The lowest Total Bid including all options by Synergy Project Management, Inc., was below the engineer's estimate for Total Base Bid plus Optional Items.

**ALTERNATIVES CONSIDERED**

At both the Moscone Station and portal structure various utility relocations strategies were evaluated as required for the project to proceed.

**FUNDING IMPACT**

The \$1.58 billion FTA New Starts Project includes this contract amount and is to be funded by a combination of federal, state and local monies. The Project Budget & Financial Plan is set forth in Enclosure 2.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

No other approvals are required to award this contract.

The Contract Compliance Office has reviewed the bid proposals and confirmed that Synergy Project Management, Inc., a Local Business Enterprise (LBE), will meet the Small Business Enterprise (SBE) participation goal of 20 percent established for this contract.

The City Attorney's Office has reviewed this calendar item.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors award San Francisco Municipal Transportation Agency Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation, to Synergy Project Management, Inc., as the lowest responsive and responsible bidder in the amount of \$9,273,939.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The Final Environmental Impact Statement/Environment Impact Report (Final EIR/EIR) for the two-phase Third Street Light Rail Project (the "Project") was completed in November 1998; and,

WHEREAS, The former Public Transportation Commission approved Resolution No. 99-009 on January 19, 1999 which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the Project's Final Environmental Impact Report and Mitigation Monitoring Report; and,

WHEREAS, Design and construction of the 1.7-mile Central Subway ("Central Subway Project") is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No 08-029 on February 19, 2008, selecting Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street as the modified LPA; and,

WHEREAS, The City of San Francisco Planning Commission adopted Motion No. M-17668 on August 7, 2008, certifying completion of the Central Subway Final Supplemental Environmental Impact Report; and,

WHEREAS, On August 19, 2008 the SFMTA Board of Directors approved Resolution No. 08-150, adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street and a construction variant to extend the tunnel another 2,000 feet north of Jackson Street, the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR and the Mitigation Monitoring and Reporting Plan; and,

WHEREAS, SFMTA Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation is a construction contract to relocate utilities and provide additional foundation support for several adjacent private structures adjacent to the proposed Moscone Station and Tunnel Portal of the Central Subway Project; and,

WHEREAS, The work to be preformed includes relocating water distribution, auxiliary water supply, traffic signals, street lighting, electric, gas, telephone and television cable and additional foundation support for adjacent private structures; and,

WHEREAS, On August 4, 2009 the SFMTA Board of Directors adopted Resolution No. 09-130 which authorized advertising the San Francisco Municipal Transportation Agency Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation; and,

WHEREAS, On October 22, 2009 four bids were received and publicly opened; and,

WHEREAS, The funding for work under Contract No. 1250 is to be furnished from federal, state and local sources; and,

WHEREAS, The Contract Compliance Office has established a 20 percent SBE goal for this contract; and,

WHEREAS, Contract No. 1250 will assist SFMTA in meeting the objectives of Goal No. 1 of the Strategic Plan – to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; Goal No. 2 – to improve transit reliability; Goal No. 3 – to improve economic vitality through improved regional transportation; and Goal No. 4 – to ensure the efficient and effective use of resources; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors awards Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation to Synergy Project Management to relocate utilities to accommodate the future Central Subway Moscone Station and Portal structure and provide foundation support in an amount not to exceed \$9,273,939 within the contract term of 458 calendar days including bid options.

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the contract with Synergy Project Management, Inc.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of \_\_\_\_\_.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

ENCLOSURE 2  
 THIRD STREET LIGHT RAIL PROJECT  
 CENTRAL SUBWAY

San Francisco Municipal Railway Contract No. 1250

Project Budget and Financial Plan

<b>Cost</b>	<b>(\$Millions)</b>
Conceptual and Preliminary Engineering	42.45
Program Management & Construction Management	155.30
Final Design	42.20
Construction Contracts	982.28
Vehicles	28.16
Contingency	212.67
Right-of-Way	34.02
Other Professional Services	81.22
<b>Total Central Subway Cost</b>	<b>\$1,578.30</b>

<b>Funding</b>	<b>(\$Millions)</b>
Federal 5309 New Starts <sup>1</sup>	942.20
State RTIP Grant	88.00
CMAQ	6.03
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-SFMTA Share	100.00
Proposition Additional 1B-SFMTA Share	40.00
Proposition K Sales Tax Funds	123.98
Option Local and Regional Sources	164.09
<b>Total Central Subway Funding</b>	<b>\$1,578.30</b>

<sup>1.</sup> New Starts funding to be determined after FTA issues approval to enter Final Design

**THIS PRINT COVERS CALENDAR ITEM NO. 12**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to execute an Agreement for the Purchase and Sale of Property (Purchase Agreement) between the City and County of San Francisco (City) and the San Francisco Redevelopment Agency (RDA) and a Memorandum of Understanding (Phelan MOU) by and among the San Francisco Municipal Transportation Agency (SFMTA), the San Francisco Mayor’s Office of Housing (MOH) and San Francisco Mayor’s Office of Economic and Workforce Development (OEWD) to facilitate the redevelopment of property that is under SFMTA jurisdiction and currently used as a bus loop.

- The City owns real property at the intersection of Phelan Avenue and Ocean Avenue, a portion of which is under SFMTA jurisdiction and used as a bus loop.
- The Board of Supervisors adopted the Balboa Park Station Area Plan which contemplates relocating the Phelan Bus Loop to an adjacent location on the property and redeveloping the Phelan Bus Loop property into a Transit Oriented Development hub with multi-modal transit surrounded by mixed-use, affordable housing and a public open space plaza.
- On March 17, 2009 the SFMTA Board of Directors approved a jurisdictional land transfer of portions of the Property between SFMTA and the Public Utilities Commission to facilitate the relocation project.
- The Purchase Agreement provides for RDA’s purchase of the portion of the Phelan Bus Loop for \$4,350,000. All proceeds generated from the sale of the Housing Parcel would be used to partially fund the relocation project budget of \$9,176,000.
- The Phelan MOU details the plan to obtain additional funds to fully finance the relocation project budget to facilitate the sale of the Housing Parcel.

**ENCLOSURES:**

1. Attachment A – Current Phelan Loop Configuration
2. Attachment B – Project Map
3. Resolution
4. Phelan MOU
5. Purchase Agreement

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO

Jason Gallegos

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

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### **PURPOSE**

Authorize the Executive Director/CEO of the SFMTA to execute the Purchase Agreement and the Phelan MOU to allow for the sale of Housing Parcel to the Agency and the relocation of the existing Phelan Bus Loop if the conditions specified in the Purchase Agreement and the Phelan MOU are met, and to request the City's Director of Property to prepare and submit legislation to the Mayor and Board of Supervisors for approval of the sale of the Housing Parcel to the Agency pursuant to the Purchase Agreement.

### **GOAL**

This item will meet the following goals and objectives of the SFMTA Strategic Plan:

Goal 3 - External Affairs - Community Relations: To improve the customer experience, community value, and enhance the image of SFMTA as well as ensure SFMTA is a leader in the industry.

Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups.

Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation.

Goal 4 - Financial Capacity: To ensure financial stability and effective resource utilization.

Objective 4.2 Ensure efficient and effective use of resources.

### **DESCRIPTION**

The Phelan Loop Relocation Project (Relocation Project) has been an active project under consideration in the Transportation Planning and Development Division for over five years. The proposed new bus loop would replicate the existing Phelan Bus Loop as much as possible given the site constraints, as the newly reconfigured bus loop would allow buses to enter just west of the firehouse (where they do now), lay over in the area behind the firehouse, and exit onto southbound Phelan Avenue to start their inbound trip. There would be space to terminate and lay over up to six busses at a time, and a space to store one bad order bus without impacting bus loop operations. There would be one pick-up space for each line, and a by-pass lane to deal with congestion that will occur, particularly at peak periods. Furthermore, there would be a protected right turn exit for the buses onto northbound Phelan Avenue. However, the turns are tighter and the flow of vehicles is not as smooth as those at the existing but loop, although a successful cone test has confirmed that operations will not be impacted significantly enough to deter the relocation project and proposed ancillary development opportunities. Thus, the new bus loop would accommodate the same level of service currently realized by the existing Phelan Bus Loop and will provide upgraded boarding islands, wide sidewalks, bus shelter and an operator restroom.

The property is located just west of the northwest corner of Ocean Avenue and Phelan Avenue, within the Ocean Avenue Commercial District in San Francisco, with a portion of the property used as the

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existing Phelan Loop turnaround for Muni buses (as shown in Attachment A – Current Phelan Loop Configuration). As depicted in Attachment B (Project Map), the proposed Housing Parcel consists of two contiguous parcels containing a total of approximately 25,572 square feet. The larger parcel contains 20,676 square feet; it is shaped like a parallelogram and has approximately 138 linear feet of frontage on Ocean Avenue. The balance of the Housing Parcel, which contains 4,896 square feet, located north of the aforementioned parcel, is irregular in shape and is subject to an existing memorandum of understanding between the SFMTA and SFPUC for the SFPUC's operation of an underground water pipeline and SFPUC's future installation and operation of a second water pipeline. The property is scheduled for rezoning under the designation Ocean Avenue Neighborhood Commercial Transit District by the end of 2009 or early 2010.

The Balboa Park Station Area Plan (the Plan) was adopted by the City's Board of Supervisors on April 7, 2009 and approved by the Mayor on April 17, 2009. OEWD is facilitating certain projects that will effect the plan's recommendation for redeveloping infill sites and select publicly-owned parcels of land to create mixed-use, transit oriented neighborhoods with affordable and market-rate housing opportunities around and adjacent to Balboa Park Station and along Ocean Avenue at the Phelan Loop. The Plan is the result of a community-driven process branded as “Better Neighborhoods” and involves many stakeholders outside of the SFMTA, including the community, City College, RDA and the following City departments: Planning, DPW, OEWD, MOH, SFPUC and the Fire Department. Pursuant to the Plan, the Housing Parcel would be developed with a mixed use building with ground floor retail space and up to 80 units of low and very low income residential rental units.

The City's Planning Commission certified the plan's Final Environmental Impact Report on December 4, 2008, which certification was fully adopted by the City's Board of Supervisors and Mayor on April 17, 2009 and contemplates the relocation of the existing Bus Loop and the redevelopment of the Housing Parcel with a mixed-use project that has affordable housing and a public, open space plaza.

In support of the plan, on March 17, 2009, the SFMTA Board authorized the Executive Director/CEO to execute a Memorandum of Understanding with the SFPUC allowing for the jurisdictional transfer of certain portions of property located at the Phelan Bus Loop and under the jurisdiction of SFMTA and SFPUC, respectively, via Resolution Number 09-043. That jurisdictional land transfer provides SFMTA with a key piece of the property needed for the Relocation Project. SFMTA and SFPUC are currently seeking approvals from the Mayor and City's Board of Supervisors to effect the exchange of jurisdiction.

The sale of the Housing Parcel is critical to the continuing efforts to redevelop the existing Phelan Bus Loop into a fully functional Transit Oriented Development hub. Carneghi-Blum and Partners, Inc. completed an appraisal of the Housing Parcel on March 3, 2009 and estimated the fair market value of the property at \$4,350,000, at a price of \$170 per square foot. This value assumes the Housing Parcel was a separate, legal parcel available for separate sale and that the aforementioned Ocean Avenue Neighborhood Commercial Transit zoning was in place. The property analyses and final valuation were based on the “sales comparison approach”, as this methodology was the most appropriate in determining the fair market value of the Housing Parcel. SFMTA Real Estate staff has reviewed the appraisal report and accepts the adjustments to comparables used by the appraiser and subsequent reconciliations to arrive at the aforementioned opinion of value.

The RDA wishes to purchase the Housing Parcel for the development of a mixed-use project with affordable housing, and MOH plans to administer such development project for the RDA. On October 20, 2009, via Resolution Number 115-2009, the RDA's Commission authorized the purchase of the Housing Parcel from the City for an amount not to exceed \$4,350,000. The Purchase Agreement would govern the sale of the Housing Parcel to the RDA, including SFMTA's conditions to such sale (Sale Conditions).

The Purchase Agreement requires that the RDA make a deposit of \$1,647,000 (the Deposit) to SFMTA. The RDA is to deliver the Deposit to the SFMTA within thirty (30) business days following the date the Purchase Agreement is duly executed and delivered by the SFMTA and the RDA. The Deposit will be credited to the purchase price, with a \$2,703,000 balance due to SFMTA at closing. SFMTA must refund the Deposit to the RDA if certain Sale Conditions are not met.

The Deposit will be used by SFMTA for the Relocation Project's initial capitalization and will be allocated towards project costs, particularly the detailed design phase of the Relocation Project as described in Exhibit C of the Phelan MOU (the Design Costs). The Deposit will be SFMTA's only financial risk under the Purchase Agreement and the Phelan MOU, as SFMTA will use the Deposit to pay for the Design Costs before SFMTA knows if the Sale Conditions will be met. If, after paying for the Design Costs, SFMTA learns that the Sale Conditions are not met, SFMTA will have to spend \$1,647,000 to reimburse the Deposit to the RDA.

The critical component impeding the closing of this collaborative effort is securing adequate funding to complete the Relocation Project. At no time will funds be allocated out of the SFMTA Operating Budget for the Relocation Project. The total proceeds from the sale of the Housing Parcel will only partially pay for the reconfiguration and construction costs associated with the Relocation Project. Currently, the Relocation Project maintains a financial feasibility gap of approximately \$4,326,000 (the Funding Gap), based on current Relocation Project budget estimates of \$9,176,000. To mitigate the Funding Gap, collaborative efforts among SFMTA, OEWD and MOH to identify and apply for relative funding opportunities in support of the Relocation Project have already begun and will increase upon execution of the Phelan MOU and Purchase Agreement.

SFMTA staff has incorporated strong funding contingency language into the Purchase Agreement and the Phelan MOU so that SFMTA is not obligated to sell the Housing Parcel or perform any portion of the Relocation Project (other than incur the design costs) if funds are not located for the Funding Gap. Such funds must be located and encumbered within the 42-month period following the full approval and execution of the Purchase Agreement. Further, the Purchase Agreement can be terminated by SFMTA if the RDA fails to perform its obligations under the Purchase Agreement or if certain legislative approvals are not timely obtained. If the Purchase Agreement is terminated, SFMTA retains the detailed design documents for future implementation and the RDA receives full reimbursement of the Deposit.

To conclude, unlike most projects the Relocation Project will not improve nor lower Muni's operations capability. However, its completion is key to catalyzing major revitalization along the Ocean Avenue commercial corridor and should be viewed by the community as a major contribution from the SFMTA

in facilitating the implementation of smart growth strategies such as “Transit Oriented Development” where there is an effective mix of land uses, using land and infrastructure efficiently, creating walkable neighborhoods that are attractive and distinctive, providing transportation and housing choices and encouraging community and stakeholder collaboration in development decisions designed to attract and retain development, residents and jobs. By entering into the Purchase Agreement and the Phelan MOU SFMTA will contribute significantly towards the attainment of the plan’s goals and objectives and, in particular, Policy 4.5.1, which calls for an increase in quality, open public spaces, especially as part of new building developments to not only improve commercial districts but also the safety, accessibility, efficiency and comfort of transit riders, pedestrians and bicyclists.

### **ALTERNATIVES CONSIDERED**

No other alternatives have been considered as the authorization to execute the Purchase Agreement and the Phelan MOU would demonstrate major support for revitalizing the area and positively contribute to the economic development efforts for the community covered by the plan. Without a new, relocated bus loop, much of the plan recommendations for the area would go unrealized. SFMTA will receive an entirely new infrastructure for its relocated bus loop operations, including an operator restroom, an overhead system, boarding islands and concrete paving while fulfilling a commitment to facilitate the development of public and community improvements.

### **FUNDING IMPACT**

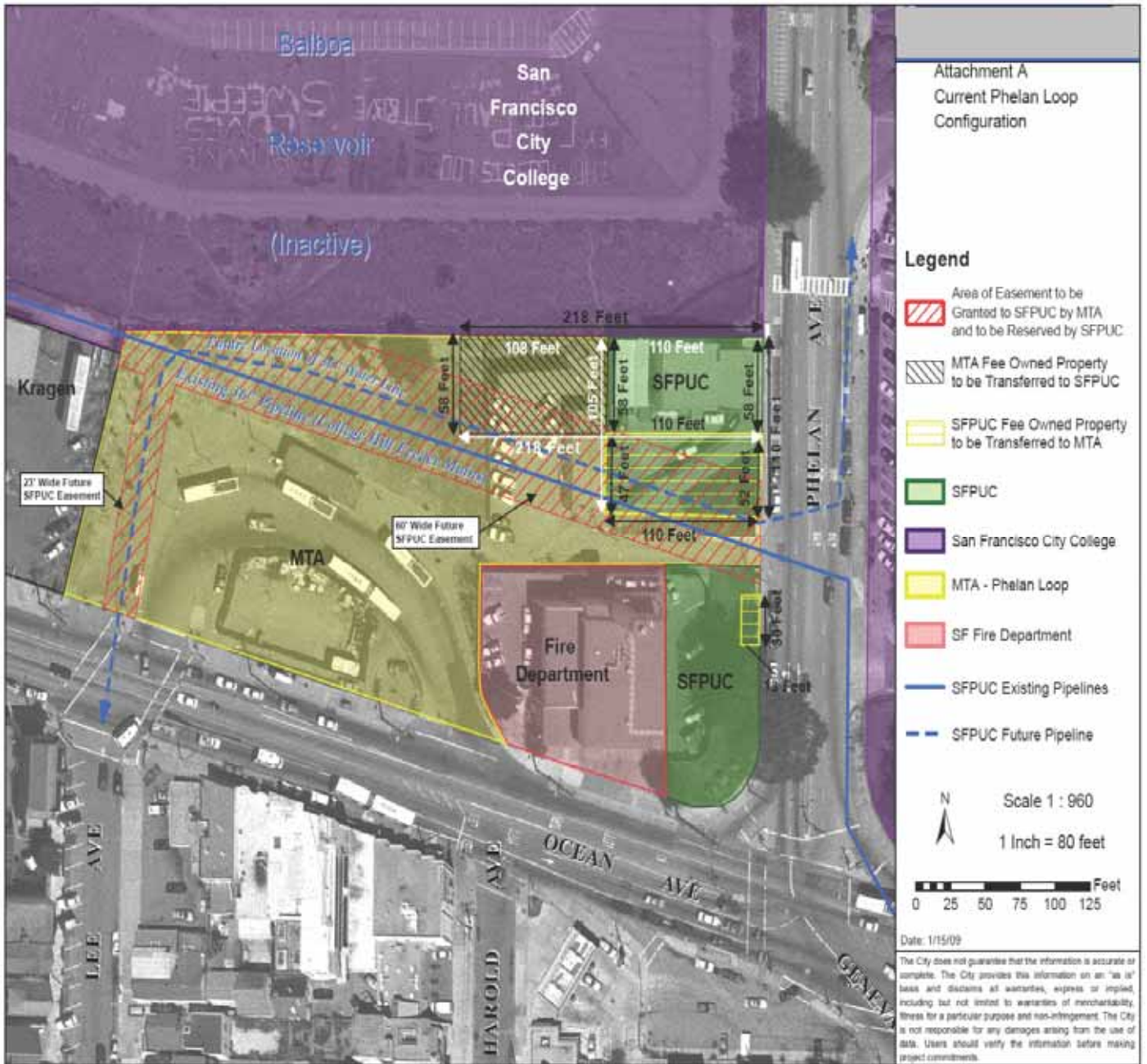
The proposed Purchase Agreement and Phelan MOU commits \$1,647,000 in SFMTA funds if funding is not secured for the Funding Gap and the Housing Parcel is not sold to the Agency. No additional consideration shall be owed by the SFMTA with respect to this transaction unless the Funding Gap is fully financed.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney's Office has reviewed this Calendar Item, the Purchase Agreement and the Phelan MOU. The Purchase Agreement will also require the approval of the City's Board of Supervisors and Mayor.

### **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize and direct the Executive Director/CEO of the SFMTA to execute the Purchase Agreement and the Phelan MOU on behalf of the SFMTA.



Attachment B – Project Map



MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The City and County of San Francisco (“City”) owns real property (the “Property”) commonly known as Assessor's Block 3180, Lot 1, located at the intersection of Phelan Avenue and Ocean Avenue, a portion of which is under SFMTA jurisdiction and is currently used as a bus loop (the "Phelan Bus Loop"); and

WHEREAS, On April 7, 2009 the City's Board of Supervisors adopted and on April 17, 2009 the Mayor approved the Balboa Park Station Area Plan (the “Plan”) which recommends redeveloping the existing Phelan Bus Loop to create a mixed-use, transit oriented neighborhood with affordable housing, retail opportunities and a public open space plaza; and

WHEREAS, The San Francisco Mayor’s Office of Housing (“MOH”) and the San Francisco Mayor’s Office of Economic and Workforce Development (“OEWD”) are facilitating certain projects that will effect the Plan's recommendation; and

WHEREAS, On March 17, 2009 the SFMTA Board of Directors passed Resolution Number 09-043 approving a jurisdictional land transfer required to implement the Plan’s recommendations to relocate the Phelan Bus Loop and construct a replacement bus loop and related improvements on an adjacent portion of the Property under SFMTA jurisdiction (collectively, the "Relocation Project"); and

WHEREAS, SFMTA wishes to further facilitate the development of the Phelan Bus Loop in accordance with the Plan by approving the sale of a portion of the Phelan Bus Loop property described as the Housing Parcel (the “Housing Parcel”) to the San Francisco Redevelopment Agency (“Agency”), which Agency plans to redevelop with a mixed-use, affordable housing project; and

WHEREAS, On October 20, 2009 via Resolution Number 115-2009, the Agency's Commission authorized the purchase of the Housing Parcel from the City for an amount not to exceed \$4,350,000 pursuant to an Agreement for the Purchase and Sale of Real Property (the "Purchase Agreement") between the City and the Agency; and

WHEREAS, SFMTA wishes to approve the execution of the Purchase Agreement to allow for the sale of the Housing Parcel to the Agency for an amount not to exceed \$4,350,000; and

WHEREAS, MOH and OEWD wish to enter into a Memorandum of Understanding (the "Phelan MOU") with SFMTA to provide for the parties' collaborative efforts to obtain funds to fully finance the Relocation Project budget and, if such funds are obtained, to facilitate the sale of the Housing Parcel to the Agency and the eventual lease of an adjacent portion of the Phelan Bus Loop property described as the "Plaza Parcel" to San Francisco Community College District or a City department for the development and operation of public open space; and

WHEREAS, For the actions contemplated herein, SFMTA relies upon the Final Environmental Impact Report (“FEIR”) for the Plan certified by the San Francisco Planning Commission (“Planning Commission”) pursuant to Motion No. 17774 on December 4, 2008, and the Planning Commission's

adoption of environmental findings pursuant to the California Environmental Quality Act ("CEQA") and a Statement of Overriding Considerations for significant and unavoidable transportation and historical resources impacts and establishment of a Mitigation Monitoring Program that attaches mitigation measures and improvement measures identified in the FEIR, all pursuant to Motion No. 17775 on December 4, 2008. A copy of the FEIR and the Planning Commission motions, including the environmental findings, Statement of Overriding Considerations, and Mitigation Monitoring Program are on file with the Planning Commission; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby authorizes the Executive Director/CEO of the SFMTA to execute the Phelan MOU with The San Francisco Mayor's Office of Housing and the San Francisco Mayor's Office of Economic and Workforce Development to provide for the parties' collaborative efforts to obtain funds to fully finance the Relocation Project budget and, if such funds are obtained, to facilitate the sale of the Housing Parcel to the San Francisco Redevelopment Agency and the eventual lease of an adjacent portion of the Phelan Bus Loop property described as the "Plaza Parcel" to San Francisco Community College District or a City department for the development and operation of public open space; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors hereby authorizes the Executive Director/CEO of the SFMTA to execute the Purchase Agreement, if the Purchase Agreement is approved by the City's Board of Supervisors and Mayor, which will allow for the sale of the Housing Parcel that is currently under SFMTA jurisdiction to the San Francisco Redevelopment Agency to facilitate implementation of the Plan; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors hereby authorizes the Executive Director/CEO of the SFMTA to request the City's Director of Property to prepare and submit legislation to the City's Mayor and Board of Supervisors for approval of the Purchase Agreement; and be it

FURTHER RESOLVED, That all actions authorized by this resolution and heretofore taken by any City official in connection with the Purchase Agreement and the Phelan MOU are hereby ratified, approved and confirmed by the SFMTA Board of Directors; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors, in accordance with CEQA, hereby adopts the San Francisco Planning Commission's Final Environmental Impact Report (the "FEIR"), environmental findings, Statement of Overriding Considerations and Mitigation Monitoring Program as its own.

I certify that the foregoing resolution was adopted by the SFMTA Board of Directors at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

#### MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "MOU"), dated as of \_\_\_\_\_, 2009, is by and among the City and County of San Francisco Municipal

Transportation Agency ("**SFMTA**"), the City and County of San Francisco Mayor's Office of Housing ("**MOH**"), and City and County of San Francisco Mayor's Office of Economic and Workforce Development ("**OEWD**").

## RECITALS

A. The City and County of San Francisco ("**City**") owns that certain property (the "**Property**") depicted in the attached Exhibit A (the "**Project Map**"), and SFMTA has jurisdiction over the portions of the Property depicted on the Project Map as the "Housing Parcel" (the "**Housing Parcel**") and as the "Plaza Parcel" (the "**Plaza Parcel**").

B. The Balboa Park Station Area Plan (the "**Plan**") was adopted by the City's Board of Supervisors on April 7, 2009 and approved by the City's Mayor on April 17, 2009, and OEWD is facilitating certain projects that will effect the Plan's recommendation for developing infill sites and selecting publicly-owned parcels of land to create a mixed-use neighborhood with housing opportunities for a variety of household sizes and income levels, including buildings with rental and ownership housing units located above street-level, neighborhood-serving retail uses around and adjacent to Balboa Park Station and along Ocean Avenue at the Phelan Loop (the "**Planning Area**").

C. Policy 4.5.1 of the Plan states that the development of affordable housing should be the first consideration in developing publicly-owned property, and the Plan further calls for an increase in quality, open public spaces within the Planning Area, especially as a part of new building developments, and contains conceptual recommendations to dramatically improve the Planning Area's commercial district, the safety and comfort of transit riders, pedestrians and bicyclists, the efficiency and function of transfers between Muni lines and from Muni services to BART services, and the accessibility of the Planning Area's transit stations to all its users.

D. The Property is within the Planning Area and the parties wish to facilitate the development of the Housing Parcel and the Plaza Parcel in accordance with the Plan, and SFMTA has agreed to perform the Relocation Project (as defined in Section 2) in accordance with the Plan to accommodate such development, if SFMTA receives sufficient funding for the Relocation Project.

E. To implement Plan recommendations for affordable housing on the Housing Parcel, MOH has negotiated with the San Francisco Redevelopment Agency ("**SFRA**") for the purchase of the Housing Parcel from SFMTA and the development of a mixed-use building with affordable housing and ground floor retail uses on the Housing Parcel if the SFMTA Conditions (as defined in Section 2) are timely satisfied or waived by SFMTA.

F. To implement additional Plan recommendations for public open space, OEWD is negotiating with the San Francisco Community College District ("**City College**"), for a 75-year lease (the "**Plaza Lease**") of the Plaza Parcel with SFMTA that would require City College to construct the improvements described on the attached Exhibit B (the "**Open Space Project**") on the Plaza Parcel and to operate and maintain the Plaza Parcel in a good working condition at its sole cost if the SFMTA Conditions are timely satisfied or waived by SFMTA and if the conditions precedent to City College's obligations are timely satisfied or waived by City College.

G. AvalonBay Communities, Inc. ("**Avalon**") wishes to acquire a permit (the "**Avalon Truck Permit**") to use a portion of the Housing Parcel to turn around trucks and facilitate the operation of a grocery store on nearby property owned by Avalon, and a permit (the "**Avalon Construction Permit**") to construct the truck turn around improvements, as further described in the SFRA Purchase Agreement.

H. The parties intend to work collaboratively to identify funds to pay for the Relocation Project, to facilitate the timely fulfillment of the SFMTA Conditions, and to negotiate the terms of the Truck Permit and the Avalon Construction Permit, and wish to enter into this MOU to set forth their



agreement with regards to such efforts.

NOW, THEREFORE, the parties agree as follows:

## AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Transfer of Housing Parcel; SFMTA Conditions to Relocation Project. If the SFMTA Conditions (as defined in this Section) are satisfied, SFMTA intends to perform the work described in the attached Exhibit C to construct a replacement bus turnaround loop on another portion of the Property and to abandon its existing bus turnaround loop on the Housing Parcel (the "**Relocation Project**"). SFMTA will no longer need to use the Housing Parcel if the Relocation Project occurs. MOH and OEWD wish to facilitate the development of affordable housing on the Housing Parcel in accordance with the Plan, which would further MOH's efforts to provide for affordable housing within the City and OEWD's efforts to effect the Plan recommendations. To allow for such development of the Housing Parcel, SFMTA shall enter into a purchase and sale agreement for the Housing Parcel in the form attached as Exhibit D (the "**SFRA Purchase Agreement**") with the San Francisco Redevelopment Agency ("**SFRA**") if the SFRA Purchase Agreement is approved by the SFMTA Board of Directors, the City's Board of Supervisors and Mayor, and the SFRA Commission, each acting in its sole discretion.

Notwithstanding anything to the contrary in the foregoing paragraph, SFMTA shall have no obligation to perform the Relocation Project unless each of the following conditions is satisfied (collectively, the "**SFMTA Conditions**"): (a) the San Francisco Public Utilities Commission ("**PUC**") transfers jurisdiction of the portion of the Property under its jurisdiction (the "**PUC Tract**") to SFMTA, all as depicted on the Project Map, on or before the Closing Date (as defined in the SFRA Purchase Agreement); (b) sufficient funds (which shall not be comprised of any SFMTA operating funds) are encumbered to permit SFMTA to pay for the Project Costs (as defined in Section 3); (c) City College or a City department agrees to enter into the Plaza Lease, construct the Open Space Project and assume the obligation to maintain and operate the Plaza Parcel, including the removal of graffiti, all at the sole cost of City College or such City department, as applicable; (d) City's Real Estate Division ("**DRE**") confirms that SFMTA has sole jurisdiction of the portion of the Property depicted as the "DPW Rechannelization Project" on the Project Map; (e) DRE and SFMTA each confirm that City has not granted any third party any right to use or occupy the Plaza Parcel; and (f) all of the City's Conditions Precedent (as defined in the SFRA Purchase Agreement) are timely fulfilled.

If the SFMTA Conditions are timely satisfied or waived by SFMTA, SFMTA shall sell the Housing Parcel to SFRA pursuant to the SFRA Purchase Agreement and perform the Relocation Project in compliance with the SFRA Purchase Agreement and the license attached as Exhibit F to the SFRA Purchase Agreement (the "**Loop Construction Permit**").

3. Project Costs. "**Project Costs**" shall be an amount equal to SFMTA's costs to effect the Relocation Project and to sell the SFMTA Parcel pursuant to the SFRA Purchase Agreement (the "**SFRA Sale**"), and shall include (i) the construction fees paid by SFMTA for the construction of the Relocation Project and the removal of the existing bus loop, (ii) construction management and engineering charges, including the conceptual engineering report prepared by SFMTA for the Relocation Project, (iii) design and other related soft costs, (iv) costs to obtain an appraisal and environmental site assessment of the Housing Parcel, to prepare a legal description of the Housing Parcel, to create the Housing Parcel as a separate legal parcel, and to effect the SFRA Sale, and (v) fees charged by DRE and the City Attorney with respect to the Relocation Project, the SFRA Sale or the Loop Construction Permit. "Project Costs" shall not include SFMTA's costs to enter into the Plaza Lease or exercise its rights or perform its obligations thereunder or to maintain and operate the existing bus turnaround loop. The parties shall cooperatively work together to have sufficient funds identified

and encumbered to pay for the Project Costs, as further set forth in Section 13 and Section 14.

4. Use of SFRA Purchase Price. The SFRA Purchase Agreement requires that SFRA pay SFMTA \$4,350,000 (the "**SFRA Purchase Price**") for the Housing Parcel, which will include an initial deposit of \$1,647,100 (the "**Deposit**"). SFMTA shall use the SFRA Purchase Price to pay for the Project Costs. If the SFMTA causes the Relocation Project to be performed, SFMTA shall provide MOH with a summary of the Project Costs, together with reasonable documentation thereof, within the two (2) year period immediately following SFMTA's issuance of a notice to proceed to commence the Relocation Project construction work. If the SFRA Purchase Price exceeds the actual Project Costs, SFMTA shall deliver one-half of such excess amount to MOH within thirty (30) days following its delivery of the Project Costs summary to MOH and shall have the right to use the remaining one-half of such excess amount in any manner. If the SFRA Purchase Agreement is terminated for any reason, SFMTA shall timely perform any obligation that it has under the SFRA Purchase Agreement to return any portion of the SFRA Purchase Price previously delivered to SFMTA by SFRA prior to such termination.

5. MOH Project Management and Assumption Right. MOH shall monitor SFRA's timely performance of its obligations under the SFRA Purchase Agreement and the Loop Construction Permit and shall facilitate SFRA and SFMTA communications as to such documents. If SFRA elects to assign its rights and obligations under the SFRA Purchase Agreement or the Loop Construction Permit to MOH, MOH shall have the right to assume, at its sole election, such rights and obligations or to further assign the applicable document to a governmental entity or to a nonprofit organization that has a mission of developing or providing affordable housing. If MOH elects to assume and retain such rights and obligations, the SFRA Purchase Agreement shall be accordingly modified to contemplate a jurisdictional transfer of the Housing Parcel from SFMTA to MOH, which modifications shall delete references to a quitclaim deed, modify the Pipeline Easement Agreement to be a non-recorded document to be filed with the City's Real Estate Division, and to replace references to approvals by Agency's Commission with references to approvals by MOH's Director.

6. Use; Conditions to SFRA Sale.

(a) The configuration and size of the Housing Parcel is depicted on the Project Map and, pursuant to the SFRA Purchase Agreement, SFMTA will prepare a legal description of the Housing Parcel (the "**Legal Description**") and cause the Housing Parcel to become a separate legal parcel (the "**Subdivision**"). The parties agree that the final size of the Housing Parcel shall be comprised of at least 25,572 square feet (20,676 square feet of buildable area). MOH shall work with DRE to obtain the Legal Description and effect the Subdivision, and SFMTA shall promptly respond to MOH's requests for information or materials needed for such matters.

(b) Prior to the Closing Date, SFMTA shall maintain the Housing Parcel in substantially the same condition it is currently in as of the Effective Date (as defined in Section 7), provided, however, that SFMTA shall have the right to use the Housing Parcel to maintain and operate the existing bus turnaround loop, perform the Relocation Project, and perform its obligations under this MOU and the SFRA Purchase Agreement. SFMTA shall further have the right to use the Housing Parcel any time after the Closing Date pursuant to its rights under the Loop Construction Permit.

(c) SFMTA agrees that it shall not, without first obtaining MOH's prior written approval, construct any improvements on the Housing Parcel unless such improvement is part of the Relocation Project, or encumber, lien, transfer, grant, lease or license all or any part of the Housing Parcel or enter into any contract affecting the Housing Parcel, except for any document that is one of the Conditions of Title (as defined in the SFRA Purchase Agreement), or for contracts that are for the performance of the Relocation Project, are terminable on thirty days notice or less, or are approved by MOH in writing. SFMTA shall negotiate the terms of the Avalon Truck Permit and the Avalon Construction Permit, which terms shall be reasonably acceptable to MOH, and MOH shall facilitate such negotiations by obtaining any Agency input reasonably required by SFMTA for such negotiations.



If to OEWD:

Mayor's Office of Economic and Workforce Development  
City Hall, Room 445  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Lisa Pagan, Project Manager  
Fax No.: (415) 554-6018  
Tel No.: (415) 554-6036

or such other address that a party may from time to time designate by notice to the other parties given pursuant to the provisions of this Section.

11. Authority. All matters requiring MOH's approval shall be approved of by the Director of MOH or his or her designee. All matters requiring SFMTA's approval shall be approved of by the Executive Director of SFMTA or his or her designee, or by the SFMTA Board of Directors, if required. All matters requiring OEWD's approval shall be approved of by its Director or his or her designee.

12. Identification of Additional Funding Sources. SFMTA's estimated costs for the Relocation Work, which are described on the attached Exhibit C, are more than the SFRA Purchase Price. OEWD, SFMTA and MOH shall each take reasonable efforts to locate additional funding sources to pay for such excess Project Costs, which shall include the following actions:

(a) Identifying all funding sources with 2009, 2010, 2011, and 2012 proposal submission deadlines for grant funds that could be used to pay for the Project Costs and for which the Project would be competitive;

(b) Discussing the Project with various grant funders, including, but not limited to, the Transportation for Livable Communities, the State of California (Proposition K and 1-C Bond Infill funds) and the U.S. Department of Transportation (TOD funds).

(c) OEWD and MOH will submit joint applications with SFMTA or will support SFMTA in submitting funding applications as needed, based on the specific criteria and requirements of each applicable funding source.

If such additional funds are located and exceed the amount by which the Project Costs exceed the SFRA Purchase Price, such excess amount shall be equally shared by MOH and SFMTA and used for any purpose selected by such party in its sole discretion.

13. Application for State and Federal Funds. SFMTA shall have the right to apply for any federal or state funds that may be available to pay for any costs incurred by SFMTA in performing the Relocation Project, including those identified by OEWD or by MOH pursuant to Section 12. Each of OEWD and MOH shall cooperate with SFMTA to provide any materials or documents held by OEWD or MOH, respectively, SFMTA reasonably requires to submit such applications or to qualify for distribution of such federal or state funds. If SFMTA is awarded any federal or state funds with respect to the Relocation Project, SFMTA shall have the right to retain such funds to the extent that such funds are applied to Project Costs that are not otherwise reimbursed through the SFRA Purchase Price; provided, however, that if such awarded funds exceed the Project Costs, SFMTA and MOH shall equally share in any additional excess amount.

14. Cooperation; Additional Environmental Review. Subject to the terms and conditions of this MOU, SFMTA, MOH and OEWD staff shall use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to all parties (subject to any necessary approvals). Notwithstanding anything to the contrary in this MOU, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the actions described in this MOU, including but not limited to a party hereto, from exercising any

discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Relocation Project, the proposed SFRA Sale, the Loop Construction Permit or the Plaza Lease. In addition to any conditions described in this MOU, the parties' obligations are expressly subject to the receipt of all legally required approvals following environmental review.

The City's Planning Commission certified the Plan's Final Environmental Impact Report on December 4, 2008, which certification was fully adopted by the City's Board of Supervisors and Mayor on April 17, 2009. The parties shall work together to cause the completion of any additional environmental review required for the approval of the SFRA Purchase Agreement, the Plaza Lease, the Loop Construction Permit or the performance of the Removal Work or the Open Space Project by the SFMTA Board of Directors, and, to the extent required, of the City's Board of Supervisors and Mayor.

15. Miscellaneous. (a) This MOU may be amended or modified only by a writing signed by the Executive Director of SFMTA, or his or her designee, the Director of MOH, or his or her designee, and the Director of OEWD, or his or her designee. (b) No waiver by any party of any of the provisions of this MOU shall be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such written waiver. (c) This MOU (including all exhibits) contains the entire understanding between the parties as of the date of this MOU, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) Notwithstanding anything to the contrary set forth herein, no officer, director, or employee of SFMTA has the authority to bind SFMTA to any action contemplated herein unless and until its Board of Directors and the Board of Supervisors or the Mayor, if necessary, approves thereof, and no officer, director or employee of MOH or OEWD has the authority to bind MOH or OEWD, as applicable, to any action contemplated herein unless and until the Board of Supervisors or the Mayor, as applicable, approves of such action. (e) All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date first written above.

SFMTA:

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: \_\_\_\_\_  
Nathaniel P. Ford Sr.  
Executive Director/CEO

Date: \_\_\_\_\_

MOH:

MAYOR'S OFFICE OF HOUSING

By: \_\_\_\_\_  
Douglas Shoemaker, Director

Date: \_\_\_\_\_

OEWD:

MAYOR'S OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT

By: \_\_\_\_\_  
Michael Cohen, Director

Date: \_\_\_\_\_

San Francisco Municipal Transportation Agency

Board of Directors

Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

EXHIBIT A

PROJECT MAP

# Phelan Loop Development Project Map

MOH/SFRA area = 25740 sq ft. (approx.) includes the Avalon Truck Loading/Turnaround







Open Space Plaza (area) = 14,400 sq ft. (approx.)

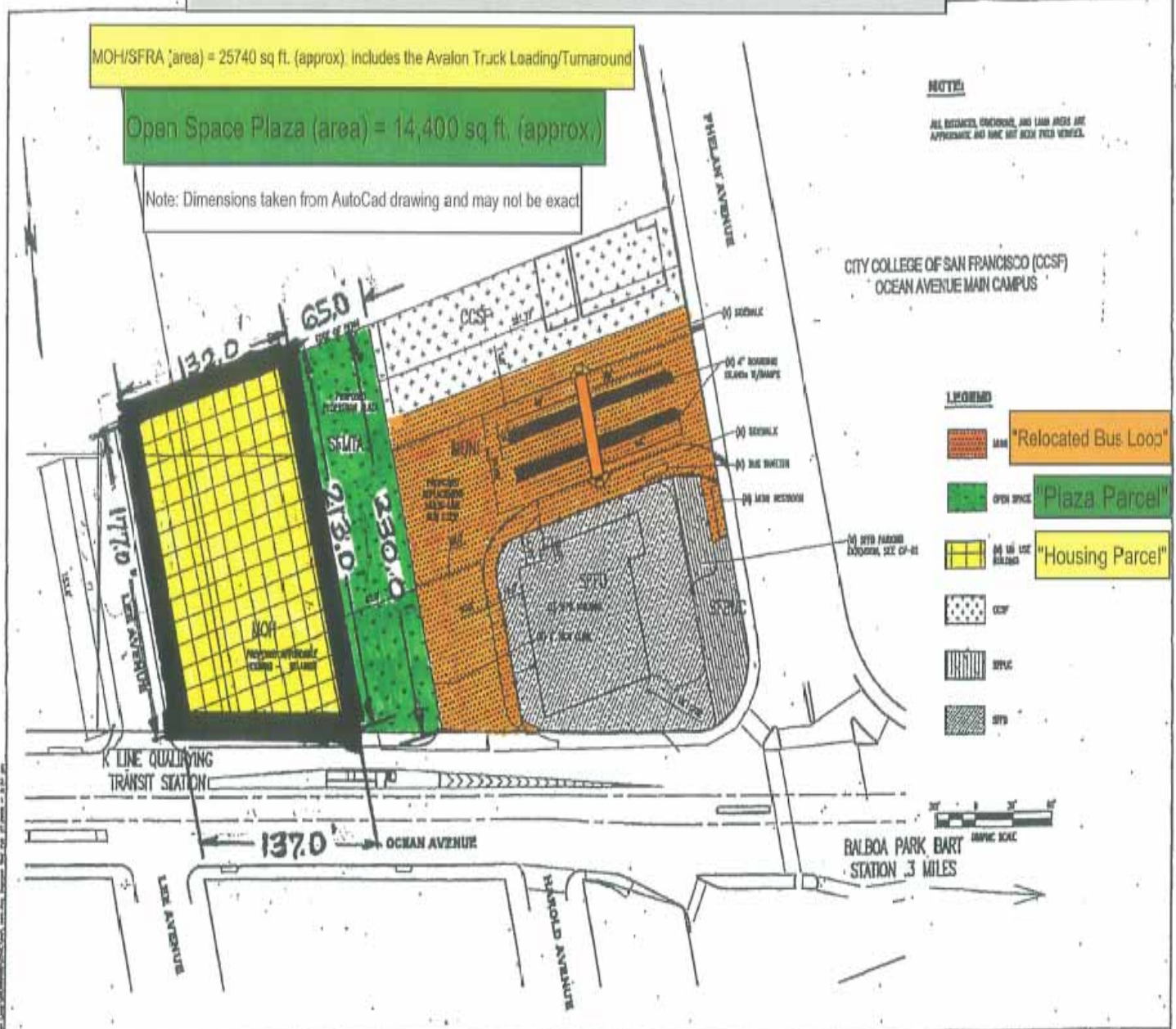
Note: Dimensions taken from AutoCad drawing and may not be exact

**NOTE:**  
ALL DISTANCES, DIMENSIONS, AND LINE WIDTHS ARE APPROXIMATE AND HAVE NOT BEEN FIELD VERIFIED.

CITY COLLEGE OF SAN FRANCISCO (CCSF)  
OCEAN AVENUE MAIN CAMPUS

**LEGEND**

-  "Relocated Bus Loop"
-  "Plaza Parcel"
-  "Housing Parcel"
-  CCSF
-  SFRA
-  SFRA



		CITY AND COUNTY OF SAN FRANCISCO <b>MUNICIPAL TRANSPORTATION AGENCY</b> PROJECT: MUNICIPAL TRANSPORTATION AGENCY PHELAN LOOP DEVELOPMENT PROPOSED PLAN	SHEET: 0
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## DESCRIPTION OF OPEN SPACE PROJECT

### **Term Sheet for Proposed Plaza Lease**

1. Purpose and Effect of Term Sheet.

This Term Sheet for Proposed Lease ("Term Sheet") will be attached to a proposed amendment (the "Amendment") to the draft Agreement for the Exchange and Conveyance of Real Estate (the "Original Agreement") by and between the City and County of San Francisco ("City") and the San Francisco Community College District/City College of San Francisco ("College") for portions of the Balboa Reservoir Property. The Amendment requires that, among other matters, City and College enter into a lease agreement ("Lease") for the College's lease of certain City-owned property adjacent to the Balboa Reservoir and near the intersection of Ocean and Phelan Avenues if the conditions precedent to the Lease specified in the Amendment are fully satisfied or waived.

The Term Sheet summarizes the terms that will be contained in the Lease, if any. City has requested College's consent to such a Lease on the terms specified in the Term Sheet as a condition to its approval of the transactions described in the Original Agreement (the "Balboa Exchange"). College would not otherwise agree to enter into the Lease, except in conjunction with City's approval of the Balboa Exchange.

If City's Board of Supervisors and Mayor, and College's Board of Trustees approve the Balboa Exchange pursuant to the Original Agreement and the Amendment, each in their sole and individual discretion, the Term Sheet shall become a binding provision of the Balboa Exchange and shall be incorporated in the Lease, if any. If City's Board of Supervisors and Mayor, and/or College's Board of Trustees do not approve the Balboa Exchange pursuant to the Original Agreement and the Amendment, the Term Sheet shall have no force and effect.

2. Lease Premises.

The City owns the real property described in Exhibit A to the Original Agreement (the "City Property"). The real property that would be the Lease premises is a portion of the City Property comprised of approximately 0.5 acres and fronting Ocean Avenue west of Phelan Avenue ("Plaza"), as depicted in Exhibit A to the Amendment. The final dimensions of the Plaza will be confirmed following the completion of the concept design for the affordable housing development proposed for development on an adjacent portion of the City Property. The final Plaza dimensions may be altered by the City to reduce, but not increase, the size of the Plaza. City shall notify College of any such reduction on or before July 1, 2010.

3. Lease Term.

The Lease term would commence ("Lease Commencement Date") on the day after the



Department of Elections certifies that the College bond for Design, Construction, Maintenance, and Management of the Plaza described in paragraph (16) below (the "Plaza Construction Bond") has been approved by the voters in the City and County of San Francisco in a general election, provided that the City has relocated its current bus loop operations at the Plaza, as further described in paragraph (17) below.

The Lease shall terminate ("Lease Termination Date") on the 75<sup>th</sup> anniversary of the Lease Commencement Date.

4. Design of Plaza.

The Lease shall require that College design the Plaza ("Plaza Design") at its sole cost.

College shall design the Plaza in substantial conformance with the public plaza described in the Balboa Park Station Area Plan and incorporate the mitigation measures specified in the Balboa Park Station Area Plan Environmental Impact Report (SCH# 2006072114) prepared by the City's Planning Department and adopted by the City's Planning Commission on December 4, 2008 (the "Balboa EIR").

College's Plaza Design is subject to state regulation. College will comply with all applicable federal, state, and local requirements relating to Plaza Design.

College shall obtain City's approval of its proposed Plaza Design (the "City Design Review"). The parties authorized to provide City's approval of any Plaza Design submitted for the City Design Review shall be the Executive Director/CEO of City's San Francisco Municipal Transportation Authority ("SFMTA") or his or her designee, the Director of the City's Mayor's Office of Housing ("MOH") or his or her designee, and the Executive Director of the City's Office of Economic and Workforce Development or his or her designee (collectively, the "City Review Committee").

- College shall submit its proposed Plaza Design to the City Review Committee, City's Planning Department staff, and any housing developer selected by City or by the San Francisco Redevelopment Agency to develop an affordable housing project adjacent to the Plaza ("Housing Developer"), within a reasonable time period before finalizing the Plaza Design.
- City shall notify College of the City Review Committee's approval or disapproval to a proposed Plaza Design within 30 days following College's delivery of a proposed Plaza Design to City for the City Design Review.
- If the City Review Committee approves of a Plaza Design, College shall cooperate with City's Planning Department staff in making a joint information-only presentation of the Plaza Design to City's Planning Commission.
- College shall review and respond to City comments received through the City Design Review. College shall not unreasonably reject or delay its review of any request by City for modifications to any proposed Plaza Design.
- City Design Review shall be at City's sole cost.

College shall provide the public a reasonable opportunity to review and comment on the proposed Plaza Design ("Public Design Review").

- College shall host 2-3 design charettes at its sole cost and invite members of the

surrounding community and public to attend. The design charettes shall occur in conjunction with any community design presentations that will be conducted by the Housing Developer, and before the commencement of construction of the Plaza.

- College shall review and respond to public comments received through Public Design Review.

Plaza Design shall include signage/identification of the Plaza being open to the public and separate from the College campus.

College shall comply with the public art requirements that would be applicable if City were constructing the Plaza with City funds (e.g., certain percentage of cost of public improvement dedicated to incorporating public art into the Plaza Design).

5. Construction of Plaza.

College shall construct the Plaza in conformity with the final Plaza Design (“Plaza Construction”) at its sole cost.

College shall complete the Plaza Construction within 18 months after the Lease Commencement Date. The parties’ goal is for Plaza Construction to be completed before or at the same time that the Housing Developer completes the proposed affordable housing development on the site adjacent to the Plaza (estimated 2013).

College’s Plaza Construction is subject to state regulation. College will comply with all applicable federal, state, and local requirements relating to Plaza Construction.

College and the Building and Construction Trades Council of San Francisco entered a Construction Project Labor Agreement (“PLA”) (effective January 2005) that applies to, among other things, the development of the Balboa Reservoir site and infrastructure on the site for future college expansion. The PLA describes College’s obligations relating to, among other things, prevailing wage. College shall conduct the Plaza construction in conformity with the PLA requirements.

**[City College to insert provision relating to enforcement of good faith local training/hiring provisions based on language approved by the College Board of Trustee approval on June 25, 2009 for review]**

6. Maintenance of Plaza.

College shall repair and maintain the Plaza (“Plaza Maintenance”) during the term of the Lease at its sole cost.

College will comply with all applicable federal, state, and local requirements relating to Plaza Maintenance.

College shall prepare a plan for repair and maintenance of the Plaza (“Maintenance Plan”).

- The Maintenance Plan should be comprehensive and designed to ensure that the Plaza, including any landscaping and improvements, are maintained in a safe, secure, sanitary, and aesthetically pleasing condition.
- The Maintenance Plan shall include reasonable provisions for such things as provision of utilities; litter collection; garbage and recycling services; graffiti removal; improvements upkeep (e.g., painting, repairs, renovations, replacing light bulbs and worn materials); and landscape maintenance (any grass must be turf grass species that are generally adaptable to San Francisco’s climatic zone and have appropriate irrigation).
- If the Plaza includes public restrooms, the Maintenance Plan shall also include any special repair and maintenance required for public restrooms.

College shall obtain City's approval of a proposed Maintenance Plan and provide City a reasonable opportunity to review and comment on the proposed Maintenance Plan (“City Maintenance Review”).

- College shall submit its proposed Maintenance Plan to the City Review Committee within a reasonable time period before finalizing the Maintenance Plan.
- City shall notify College of the City Review Committee's approval or disapproval to a proposed Maintenance Plan within 30 days following College's delivery of a proposed Maintenance Plan to City for the City Design Review.
- College shall review and respond to City comments received through City Maintenance Review.
- City Maintenance Review shall be at City’s sole cost.

If College does not timely perform its maintenance obligations within ten business days after receiving written notice of default from City, City would have the right to perform those unperformed maintenance obligations. College shall promptly reimburse City for its actual and direct costs in performing any such maintenance, including the costs for using City staff to perform such maintenance.

7. Uses of Plaza.

College shall operate the Plaza in a manner that provides for its use by the public use for the following purposes, subject to reasonable terms and conditions of the College:

- (1) Pedestrian Right of Way.
  - Safe and inviting connection for people walking between the areas abutting the Plaza (e.g., College’s campus, the future City bus facilities, if constructed by City, the existing light rail facilities, and the future and existing retail buildings and housing in the general area).
- (2) Public/Community Uses.
  - Social, entertainment, and other community uses that may be proposed by the City, the College, or the public (i.e., farmer’s markets, special events, entertainment activities).
  - Passive seating and resting areas, including benches, tables and chairs.

- (3) Vending/Retail Uses.
  - Mobile, non-permanent vending/retail uses proposed by the City, the College, or the public (i.e., food or other push cart or kiosk vendors).
- (4) Student/College Uses.
  - Student club tables.

8. Management of Plaza.

College shall manage the Plaza (“Plaza Management”) during the term of the Lease at its sole cost.

College may develop a reasonable process for receiving and reviewing applications for proposed public uses of the Plaza. College’s process for approving proposed uses of the Plaza should not be unduly cumbersome, prohibitive or excessive.

College may charge reasonable fees for use of Plaza. Such fees shall not be excessive or unreasonable and shall be only used by College to offset its costs of Plaza Maintenance and Plaza Management, and/or to perform its obligations under the Lease.

All permittees must acquire all City permits applicable to such use, at the permittee’s sole cost.

All permittees must carry insurance of a type and amount reasonably required by the City and College, naming City and College as additional insureds, at the permittee’s sole cost.

College shall minimize early morning and late evening programming, and any such programming should not generate a lot of noise.

College shall ensure litter control (as further described below under Maintenance).

College shall not permit any uses that generate noxious or hazardous odors.

College shall take the measures to secure the Plaza that a public entity would reasonably take to secure a public space of similar size and uses, and shall require additional security measures for any permitted uses, as necessary and appropriate.

College may arrange for a third party to manage the Plaza in compliance with the Lease terms, subject to the City’s approval, which approval shall not be unreasonably withheld.

9. Release and Indemnification.

College shall waive any right to recover from, and forever release and discharge, City from any and all Claims (defined as follows) that may arise out of or in any way be connected with the physical, geological or environmental condition of the Plaza, including, without limitation, any Hazardous Material in, on, under, above or about the Plaza (collectively, the "Released Claims"), but excluding any Claims that arise from City's failure to perform the City Remediation Work (as defined in Section 11). "Claims"

shall mean all liabilities, losses, costs, claims, demands, legal or administrative proceedings, judgments, settlements, damages, liens, fines, penalties, costs, or expenses whatsoever, including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen.

College shall indemnify, protect, defend, and hold harmless City from and against any Claims arising out of or relating to the conduct of College in Design, Construction, Maintenance, or Management of the Plaza, except to the extent such Claims arise from the intentional acts or negligence of City. Such indemnification obligations shall not apply to any Claims arising out of or relating to the environmental condition of the Plaza existing prior to the Lease Commencement Date, except to the extent that such condition was released or otherwise exacerbated by College's negligent acts or willful misconduct.

City shall indemnify, protect defend, and hold harmless College from and against any Claims arising out of or relating to the intentional acts or negligence of City, except to the extent such Claims arise from any intentional acts or negligence of College or from any of the Released Claims.

10. Insurance.

College shall keep and maintain during the term of the Lease commercial general liability insurance, worker's compensation insurance, and business automobile insurance in the amounts reasonably required by City's risk manager.

College may keep and maintain such insurance through self-insurance.

11. Delivery of Plaza from City to College.

Prior to the Lease Commencement Date, City shall remove, at City's sole cost, any and all improvements, fixtures, furnishings, equipment or other personal property from the Plaza, and shall perform the soil remediation work described in the attached Schedule 1 (the "City Remediation Work"). College shall not be responsible for remediating any environmental condition existing at the Plaza on the Lease Commencement Date, except to the extent that such condition was released or otherwise exacerbated by College's negligent acts or willful misconduct.

City shall deliver, at City's sole cost, possession of the Plaza on the Lease Commencement Date (i) free and clear of possession and rights of possession of the Plaza by any other parties (subject to City's retained rights under the Lease), (ii) subject to the existing and future City pipelines described in the Memorandum of Understanding dated as of February 13, 2007 (the "Pipeline MOU"), between SFMTA and the City's Public Utilities Commission ("SFPUC"), and the rights of SFPUC and the obligations of SFMTA under the Pipeline MOU, **(subject to DRE and SFMTA confirmation on whether any other unrecorded rights to plaza)** and (iii) subject to all liens, encumbrances, covenants, and easements of record existing as of \_\_\_\_\_, 2009 or otherwise consented to by College. College shall not withhold its consent to any new matter of record if it does not materially increase College's costs or liabilities in performing its Lease obligations. College shall not be responsible for any leases, taxes or

assessments applicable to any periods prior to the Lease Commencement Date.

12. Delivery of Plaza from College to City.

On the Lease Termination Date, College shall surrender the Plaza, including all improvements, to City in good condition and repair, free from any significant defects, debris or hazards, and free and clear of all liens, easements, assessments, taxes or any other encumbrances created by or caused by the action or inaction of College.

On or before the Lease Termination Date, College shall remove, at College's sole cost, any and all fixtures, furnishings, equipment or other personal property from the Plaza.

On or before the Lease Termination Date, College shall remediate any environmental condition of the Plaza to the extent that it was created or exacerbated during the term of the Lease.

13. Modifications for Bus Safety.

If the Plaza is constructed in compliance with College's obligations under the Lease, City shall have the right, subject to the requirements and obligations of College under any the Plaza Construction Bond, to modify the design and/or permitted uses of such constructed Plaza if it determines that such unmodified design or uses create a safety hazard at, or materially impacts operations of, City's existing or relocated bus facilities ("Bus Safety") at City's sole cost. College shall not be responsible for any additional expenses in connection with such modification the design and/or permitted uses of the Plaza. Any design and increased construction costs of to so modify any improvements to address Bus Safety shall be made at City's sole cost.

14. Condemnation.

College shall be the owner of any improvements that College constructs on the Plaza during the term of the Lease. If any public entity, including the City, condemns the Plaza by Eminent Domain during the term of the Lease, College shall be entitled to compensation for the value of the improvements.

15. Lease Rent.

College shall pay costs as described herein to Design, Construct, Maintain, and Manage the Plaza and perform its obligations under the Lease. City shall not charge any additional rent to College for its lease of the Plaza during the term of the Lease.

16. Bond Financing.

City understands that College can only fund College's obligations described in the Term Sheet through the issuance of a new bond, and College does not otherwise have a source of funds for the Design, Construction, Maintenance, and Management of the Plaza.

College will put a bond measure before the voters in or before the November 2012

general election that would propose that the voters approve funding for College's obligations described in the Term Sheet and any Lease. If College reasonably determines that it is unlikely that such a bond measure would pass if it were submitted for the November 2012 general election, College shall notify City and, if the parties mutually agree, such bond measure may be postponed to the next general election that immediately follows the November 2012 general election (the "Postponed Election").

City understands that bond financing is at the discretion of the voters and College cannot guarantee that any such bond will be approved by the voters.

If College cannot secure bond financing in or before the November 2012 election (or the Postponed Election, as applicable), the Term Sheet shall automatically terminate and have no force and effect.

17. Bus Loop Operation.

If SFMTA does not construct a new bus turnaround loop and move its buses off the existing bus turnaround loop that is currently partially located on the Plaza ("Bus Loop Operation") on or before the November 2012 general election (or the Postponed Election, as applicable), the Term Sheet shall automatically terminate and have no force and effect.

During the term of the Lease, SFMTA shall have the right to access the Plaza at all times to the extent necessary to perform any work reasonably necessary to maintain, repair, replace, or operate the new bus turnaround loop built by SFMTA adjacent to the Plaza. SFMTA shall provide College with at least \_\_\_\_ days' prior notice of any SFMTA's intent to access the Plaza for such purposes, provided, however, that no such prior notice shall be required in the event of an emergency.

18. Environmental Review.

City analyzed the Plaza in the Balboa EIR for General Plan consistency and CEQA compliance. If the City determines that the final Plaza Design differs from the Plaza design described in the Balboa EIR in a manner that requires an additional environmental analysis, City shall perform such additional review at City's sole cost. The parties intend to rely on the Balboa EIR, and any additional environmental analysis City elects to perform in connection with the Plaza, in approving the Lease and for Design, Construction, Maintenance, and Management of the Plaza.

College is not obligated to prepare any additional environmental review or undergo any additional General Plan review related to the Plaza or its obligations under the Term Sheet.

If City determines that the Plaza is not consistent with the City General Plan, City shall bear the cost for revising the Plaza Design to make it consistent with the City General Plan and/or preparing any additional environmental review.

If City's Balboa EIR, or City's or College's actions in reliance on the Balboa EIR, is subject to legal challenge, College's obligations under the Term Sheet will be modified

accordingly by agreement of the parties.

If City's Balboa EIR is deemed inadequate as a result of legal challenge, City may revise the Balboa EIR to correct such inadequacies at City's sole cost, or the parties' obligations under the Term Sheet terminate.



## EXHIBIT C

### DESCRIPTION OF RELOCATION PROJECT AND RELOCATION PROJECT COSTS

- A. The Relocation Project includes the following activities with respect to the Housing Parcel and other portions of the City Property:
- (i) Constructing a new bus loop, layover and pickup areas, performing related operational and design activities needed to reconfigure the bus loop, and removing certain improvements related to the existing bus loop;
  - (ii) Excavating approximately four feet (4') of contaminated soil located in an approximate ten foot (10') by thirty foot (30') area of the City Property on which the new bus loop improvements will be constructed, removing and disposing the excavated soil at a Class 2 land fill, and back filling the excavated area with clean soil;
  - (iii) Creating a legal description of the Housing Parcel and causing the Housing Parcel to become a separate legal parcel;
  - (iv) Providing for a new operator restroom;
  - (v) Performing traffic signals work for buses exiting new bus loop onto Phelan Avenue, and making firehouse modifications (upgrade an existing heating system and HVAC).
- B. Anticipated tasks regarding the bus loop, layover and pickup area construction and operational activities are further described below:

#### New Bus Loop

- \* Construct new driveway, drop off, layover and pickup areas
- \* Construct new pedestrian sidewalks
- \* Construct two new boarding islands
- \* Construct drainage and storm sewer system under loop
- \* Construct new fence between the bookstore driveway and new sidewalk
- \* Provide OCS for the new trolley bus layover
- \* Remove existing OCS of the old trolley bus layover and along Ocean Avenue including poles not needed for trolley support or lighting
- \* Provide visually contrasting pavement and tactile treatment within loop to delineate pedestrian path of travel
- \* Provide power for lighting and bus shelters
- \* Provide bollards to prevent runaway buses from entering open space
- \* Provide appropriate landscaping

#### Traffic Striping and Signalization

- \* Bus activated traffic signals for buses exiting loop onto Phelan Avenue
- \* Connect pedestrian activated traffic signals at Cloud Circle/campus bookstore to Phelan Loop
- \* Implement new permanent striping on Phelan Avenue from the bus loop exit to the Ocean/ Geneva intersection
- \* Provide zebra striping for crosswalk crossing loop exit onto Phelan Avenue
- \* Provide power to IC cabinet
- \* Widening of Phelan Avenue southbound to include additional lane from bus loop exit to Ocean/Geneva Intersection (City's Division of Parking & Traffic is still investigating the impact of an additional lane and may require additional work)

- C. The Removal Costs also include the following project-related costs and fees:
- \* City's costs related to the appraisal of the Property prepared for the City by Carneghi-Blum & Partners, Inc., dated as of January 2007, the letter report to the City's Department of Public Works that was prepared by Camp Dresser & McKee Inc. and dated June 4, 2008, and the Phase I Environmental Site Assessment prepared for the City's Department of Public Works by SCA Environmental, Inc. and dated March 5, 2007
  - \* Any additional costs incurred by City to effect Closing
  - \* Fees charged to SFMTA by the City's Real Estate Division and the City Attorney with respect to the relocation of the bus loop, the sale of the Housing Parcel to the Agency, the Phelan MOU or the Loop Construction Permit

D. A current budget for the estimated Removal Costs is as follows:

**Phelan Bus Loop**

<b>Conceptual Engineering Phase</b>	<b>Project Cost</b>
MTA	\$450,000
DPW	\$50,000
<b>TOTAL</b>	<b>\$500,000</b>
<b>Phelan Bus Loop</b>	
<b>Detail Design Phase</b>	<b>Project Cost</b>
MTA-Development Section	\$450,000
DPT Design of Cross Walk and Signal on Phelan	\$75,000
Others	\$80,000
DPW- BOA	\$180,000
BOE Electrical Section	\$67,000
BOE Mechanical Section	\$73,000
BOE Structural Section	\$65,000
BOE Landscape Architecture	\$60,000
BOE Hydraulic Section	\$30,000
BOE Streets & Highways	\$45,000
Disability Access Coordinator	\$7,000
BSM Survey	\$15,000
Other City Staff City Attorney	\$75,000
Other City Staff Real Estate	\$75,000
<b>TOTAL</b>	<b>\$1,267,000</b>
DD Phase Contingency – 30%	\$380,100
<b>Total Cost for Detail Design Phase</b>	<b>\$1,647,100</b>
<b>Phelan Bus Loop</b>	
<b>Construction Phase</b>	<b>Project Cost</b>
Construction Contractor	\$4,100,000
Construction DPT (roadway, signage, striping)	\$50,000
MTA – Development Section	\$850,000
MTA – DPT	\$50,000
MTA – Operations Support	\$150,000
<b>TOTAL</b>	<b>\$5,200,000</b>
Construction Phase Contingency – 20%	\$1,040,000
<b>Total Cost for Construction Phase</b>	<b>\$6,240,000</b>
<b>Sub-Total Project (Detail Design and Construction) Cost</b>	<b>\$7,887,100</b>
Escalation to Mid-Point of Construction (3 years) 2007 – 10%	\$788,710
<b>Total Phelan Loop Project Cost</b>	<b>\$9,176,000</b>

EXHIBIT D

SFRA PURCHASE AGREEMENT

AGREEMENT  
FOR THE PURCHASE AND SALE OF REAL PROPERTY

by and between

CITY AND COUNTY OF SAN FRANCISCO

and

REDEVELOPMENT AGENCY  
OF CITY AND COUNTY OF SAN FRANCISCO

For the purchase of

Portion of Lot 1, Assessor's Block 3180  
San Francisco, California

\_\_\_\_\_, 2009

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**LIST OF EXHIBITS AND SCHEDULES:**

- EXHIBIT A: Legal Description of City Property
- EXHIBIT B: Depiction of Housing Parcel
- EXHIBIT C: Description of Removal Work
- EXHIBIT D: Form of Quitclaim Deed
- EXHIBIT E: Pipeline Easement
- EXHIBIT F: Loop Construction Permit

AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY  
(Portion of Lot 1, Block 3180)

THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (this "**Agreement**") is entered into as of \_\_\_\_\_, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic established pursuant to the Community Redevelopment Law of the State of California ("**Agency**"). For purposes of this Agreement, "**Party**" means City or Agency, as a party to this Agreement, and "**Parties**" means both City and Agency, as parties to this Agreement.

**RECITALS**

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. City owns that certain real property known as Assessor's Block 3180, Lot 1, located at the intersection of Phelan Avenue and Ocean Avenue in the City and County of San Francisco and shown on the map attached hereto as Exhibit A (the "**City Property**").

B. Agency wishes to purchase the portion of the City Property that is generally depicted on the attached Exhibit B (the "**Housing Parcel**"), which is under the jurisdiction of the City's Municipal Transportation Agency ("**SFMTA**") and is currently used as a bus loop by SFMTA.

C. City wishes to facilitate the development of the City Property in accordance with the Balboa Park Station Area Plan (the "**Plan**") adopted by the City's Board of Supervisors on April 7, 2009 and approved by the City's Mayor on April 17, 2009, which contemplates replacing the existing bus loop on the Housing Parcel with a mixed-use building with affordable housing (the "**Mixed Use Project**").

D. SFMTA is willing to remove the existing bus loop from the Housing Parcel and transfer the Housing Parcel to the Agency for the development and operation of the Mixed-Use Project if, among other conditions, SFMTA receives sufficient funds to remove the existing bus loop and construct a replacement bus loop on another portion of the City Property.

E. The purchase price to be paid by Agency for the Housing Parcel does not fully fund such removal and replacement work, and the City is taking efforts to secure additional funds pursuant to a Memorandum of Understanding (the "**Phelan MOU**") dated as of \_\_\_\_\_ by and among SFMTA, the City's Mayor's Office of Housing ("**MOH**"), and the City and County of San Francisco Mayor's Office of Economic and Workforce Development ("**OEWD**").

F. If such additional funds are secured, Agency and City agree to the transfer of the Housing Parcel on the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of

which are acknowledged, the Parties agree as follows:

1. PROPERTY; FUNDING CONTINGENCY

1.1. Property. The "**Property**" shall be comprised of (a) the Housing Parcel , (b) all improvements and fixtures located thereon (collectively, the "**Improvements**") except for the overhead wires, trolley poles, electrical connections, bus shelters, and bus stop signs that are part of SFMTA's operations (collectively, the "**Excluded Items**"), and (c) any and all rights, privileges, and easements incidental or appurtenant to the Housing Parcel or the Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under any of the Housing Parcel, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating thereto, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment thereof, including rights of access to adjacent roads and alleys.

1.2. Funding Contingency. The bus loop removal work and new bus loop construction work that City must perform to allow for any transfer of the Housing Parcel to the Agency is generally described on the attached Exhibit C (the "**Removal Work**"). City and Agency agree that such description of the Removal Work is the parties' current understanding of the work needed to remove the existing bus loop and construct a replacement bus loop and such description may need revisions once City receives final plans and specifications for the Removal Work. Such revisions shall be subject to Agency's prior written consent, which shall not be unreasonably withheld or conditioned. City shall have no obligation to transfer the Property to the Agency pursuant to this Agreement unless funds sufficient to pay for SFMTA's estimated cost to perform the Removal Work (which funds shall not be comprised of any SFMTA operating funds) are encumbered. If such funding is encumbered by City during the forty-two (42) month period (the "**Funding Period**") immediately following the Effective Date (as defined in Section 11.17), City shall transfer the Housing Parcel to Agency pursuant and subject to the terms and conditions of this Agreement. If such funding is not encumbered during the Funding Period, either City or Agency shall have the right to terminate this Agreement by delivering written notice of such termination (the "**Funding Termination Letter**") within the thirty (30) day period immediately following the expiration of the Funding Period. This Agreement shall automatically terminate as of the date the Funding Termination Letter is delivered, provided that the Surviving Obligations (as defined in Section 11.18) shall survive the termination of this Agreement.

2. PURCHASE PRICE; DEPOSIT; CLOSING COSTS

2.1. Purchase Price; Deposit. The purchase price for the Property (the "**Purchase Price**") shall be \$4,350,000. Within thirty (30) business days following the date this Agreement is duly executed and delivered by City and Agency, Agency shall deliver \$1,647,100 (the "**Deposit**") to City. If the Closing occurs, the Deposit shall be credited against the Purchase Price and, on the Closing Date, Agency shall deliver an amount equal to the Purchase Price, less the Deposit, to City.

If the Closing does not occur due to City's material default of its obligations under this Agreement or the termination of this Agreement pursuant to Section 1.2 , Section 5.2, Section 5.4 or Section 7, City shall return the Deposit to Agency within thirty (30) days of Agency's request therefor. If the Closing does not occur due to any other reason, City shall have the right to retain the Deposit.

2.2. Closing Costs. Agency shall pay all closing costs related to the transfer of the Property to Agency pursuant to this Agreement, including all title and escrow costs.

3. LEGAL PARCEL; TITLE

3.1 Legal Parcel. The Housing Parcel is not a separate, legal parcel and City shall, at its sole cost, create a legal description for the Housing Parcel and take all actions necessary to cause it to be a separate legal parcel (the "**Subdivision**") on or before the Closing Date. City shall deliver a draft legal description for the Housing Parcel to Agency and Agency shall notify City of its approval or disapproval of any Housing Parcel legal description prepared by City within thirty (30) days of receiving such draft legal description from the City. Agency shall not withhold such approval if the legal description delivered for review by City results in the Housing Parcel being comprised of at least 25,572 square feet, with at least 20,676 square feet of buildable area. Any Housing Parcel legal description that is prepared by City and approved by the Agency shall be the "**Final Legal Description**". The City shall not be required to obtain Agency's approval with respect to the Subdivision, provided that City shall use the Final Legal Description in effecting the Subdivision.

3.2 Conditions of Title. At the Closing, City shall convey its right, title and interest in and to the Property to Agency by quitclaim deed in substantially the form of the attached Exhibit D (the "**Deed**"). Title to the Property shall be subject to all existing exceptions and encumbrances existing as the Closing Date, including, but not limited to (a) all exceptions and conditions set forth in the preliminary title report (the "**Title Report**") for Order No. \_\_\_\_\_ prepared by Chicago Title Company (the "**Title Company**") and dated \_\_\_\_\_, 2009 (**updated version to be delivered to Agency before preparing execution copy of this Agreement**), (b) all liens of local real estate taxes and assessments, (c) all exceptions and exceptions related to the Plan or the Subdivision, (d) all other exceptions and encumbrances whether or not disclosed by the Title Report or the public records or any other documents delivered to Agency by City, including, without limitation, those that would be disclosed by an accurate survey or inspection of the Property, the appraisal of the Property prepared for the City by Carneghi-Blum & Partners, Inc., dated as of January 2007, and the appraisal of the Property prepared for the Agency Carneghi-Blum & Partners, Inc., dated as of March 2009 (together, the "**Appraisal**"), (e) a utility pipeline easement in substantially the form attached as Exhibit E, which shall be recorded in the Official Records on or before Closing (the "**Pipeline Easement Agreement**"), (f) the City's right to use the Property for the twenty-four (24) month period (the "**Permit Term**") immediately following the Closing pursuant to the permit attached hereto as Exhibit F (the "**Loop Construction Permit**"), which shall not include any permit fee, (g) any truck loading permit or construction permit granted by the City pursuant to Section 3.4, and (h) any option to ground lease granted by City pursuant to Section 3.5. All of the foregoing exceptions to title shall be referred to collectively as the "**Conditions of Title**." Agency acknowledges that it has received the Title Report and all underlying documents.

3.3 Agency's Responsibility for Title Insurance. Agency understands and agrees that the right, title and interest to be acquired in the Property shall not exceed that vested in City, and City is under no obligation to furnish any policy of title insurance in connection with this transaction. Agency recognizes that any fences or other physical monument of the Housing Parcel 's boundary lines may not correspond to the legal description of the Housing Parcel. City shall not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters which an accurate survey or inspection might reveal. It is Agency's sole responsibility to obtain a survey and a policy of title insurance, if desired.

3.4 Avalon Truck Loading Permit and Construction Permit. The City shall have the right to issue a one hundred fourteen (114) month permit to AvalonBay Communities, Inc. ("**Avalon**") that allows the portion of the Housing Parcel shown as the "Potential Avalon Permit Area" on the attached Exhibit B to be used to turn around trucks and back up such trucks into a loading dock located on adjacent property owned by Avalon, and to issue a construction permit to Avalon that allows for the construction of turn around improvements necessary in the Potential Avalon Permit Area, however, that the form of the permits shall be reasonably



acceptable to the Agency. Such permits shall specify that City's obligations thereunder will terminate as of any date that the City transfers fee ownership of the portion of the Housing Parcel affected by such permits to the Agency, that the Agency shall assume City's obligations under the permits as of any such transfer date, and that City shall be released from any further obligations or liability under the permits as of such transfer date. The Agency shall promptly respond to City's request for Agency's approval to the terms and form of the permits.

3.5 Option to Lease to Developer. If Agency acquires the Housing Parcel pursuant to this Agreement, the Agency intends to enter into a ground lease with a low-income housing developer that would construct and operate the Mixed Use Project on the Housing Parcel. If Agency identifies a reasonably qualified entity to be the developer before Closing, and such identified developer provides evidence (in a form acceptable to City) that the developer is reasonably capable of constructing and operating the Mixed Use Project and must have an option to ground lease for the Housing Parcel prior to the Closing Date to timely apply for funding to finance its construction and operation of the Mixed Use Project, the City agrees to grant such identified developer, at no cost, an option for a ground lease that will (i) be in a form reasonably acceptable to Agency and City, (ii) condition the developer's right to exercise the option on the Agency ownership of fee title to the Housing Parcel as of such exercise date, and on the developer's and Agency's mutual agreement to the final form of ground lease, (iii) specify such developer is not a third party beneficiary under this Agreement, (iv) specify that the City would have no obligations to such developer if the Housing Parcel is not transferred to the Agency and the Developer would have no rights to the Housing Parcel if the Housing Parcel is not transferred to the Agency, and (v) specify that the negotiated ground lease would not be for a term, including extension options, of more than ninety-nine (99) years.

#### 4. AS IS PURCHASE; RELEASE OF CITY

4.1 Agency's Investigation. Agency represents and warrants to City that Agency has performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through agents of Agency's choosing, including, without limitation, with regard to the following matters (collectively, the "**Property Conditions**"):

4.1.1 All matters relating to title including, without limitation, the existence, quality, nature and adequacy of any access to the Property, and any survey matters relating to the Property (including, but not limited to, the total square footage of the Property).

4.1.2 The zoning and legal status of the Property, including, without limitation, the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, resolutions and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements and building and fire codes.

4.1.3 The quality, nature, adequacy, and physical, geological and environmental condition of the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement, "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

4.1.4 The suitability of the Property for Agency's intended use. Agency represents and warrants that its intended use of the Property is the development and operation of the Mixed Use Project.

4.1.5 The economics and development potential, if any, of the Property.

4.1.6 All other matters of material significance affecting the Property, including any matters related to the Plan.

4.1.7 Any other matters relating to the Property referred to in the Appraisal, the Title Report, and the Environmental Reports (as defined in Section 4.3 below).

4.2 Entry and Indemnity. In connection with any entry by Agency or its Agents or Invitees (both as defined in Section 11.7) onto the Property prior to the Closing Date, Agency shall give City reasonable advance written notice of such entry and shall conduct such entry and any inspections in connection therewith so as to minimize, to the extent possible, interference with uses being made of the Property and otherwise in a manner and on terms and conditions acceptable to City. All entries by Agency or its Agents or Invitees onto the Property to perform any testing or other investigations which could affect the physical condition of the Property (including, without limitation, soil borings) or the uses thereof will be made only pursuant to the terms and conditions of a permit to enter pursuant to a form that is acceptable to City. Without limiting the foregoing, prior to any entry to perform any on-site testing, Agency shall give City written notice thereof, including the identity of the company or persons who will perform such testing, the exact time and location of the testing and the proposed scope of the testing. City, at its sole discretion, shall have the right to approve, disapprove or condition its approval to the proposed testing within ten (10) business days after receipt of such notice. If Agency or its Agents or Invitees take any sample from the Property in connection with any approved testing, upon written request Agency shall provide to City a portion of such sample being tested to allow City, if it so chooses, to perform its own testing. City or its representative may be present to observe any testing or other inspection performed on the Property. Agency shall promptly deliver to City copies of any reports relating to any testing or other inspection of the Property performed by Agency or its Agents or Invitees. Agency shall promptly deliver to City copies of any reports relating to any testing or other inspection of the Property performed by Agency or its agents, employees or contractors, but shall not deliver copies of any such reports to any other person or entity without Agency's prior written approval. Agency shall keep all test results and information strictly confidential, and shall indemnify, reimburse, defend and hold City harmless from and against any loss, cost, expense, or damage resulting from Agency's failure to keep any information obtained from an inspection or testing of the Property strictly confidential; provided, however, Agency shall not be liable if and to the extent Agency is required to disclose such information pursuant to a court order. Agency shall comply with all laws, ordinances, rules, regulations, orders and the like in connection with any entry onto or testing of the Property.

Agency shall maintain, and shall require that any of its Agents and Invitees entering the Property maintain, public liability insurance and property damage insurance in amounts and in form and substance adequate to insure City against all liability of Agency and its Agents or Invitees arising out of any entry or inspection of the Property in connection with the transaction contemplated hereby, and Agency shall provide City with evidence of such insurance coverage upon request from City. Notwithstanding anything to the contrary to the foregoing, City agrees that Agency shall have the right to self-insure in lieu of carrying such insurance coverage, provided that each of Agency's Agents and Invitees shall not have the right to such self-insurance.

To the fullest extent permitted under law, Agency shall indemnify, defend and hold harmless City, its Agents, and each of them, from and against any liabilities, costs, damages, losses, liens, claims and expenses (including, without limitation, reasonable fees of attorneys, experts and consultants and related costs) arising out of or relating to the conduct of Agency, its Agents, Invitees, or its or their activities during any entry on, under or about the Property in performing the inspections, testings or inquiries provided for in this Agreement, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries

or deaths to any persons (including, without limitation, Agency's Agents and Invitees) and damage to any property, from any cause whatsoever. The foregoing indemnity shall survive beyond the Closing Date, or, if Closing does not occur, beyond the termination of this Agreement.

4.3 Hazardous Materials Disclosure. California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, Agency is hereby advised that occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, arsenic, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Property, which are described in the letter report to the City's Department of Public Works that was prepared by Camp Dresser & McKee Inc. and dated June 4, 2008, and the Phase I Environmental Site Assessment prepared for the City's Department of Public Works by SCA Environmental, Inc. and dated March 5, 2007 (collectively, the "**Environmental Reports**"), copies of which have been delivered to or made available to Agency. **(Confirm if any other environmental reports delivered to Agency before preparing execution copy of this Agreement)** By execution of this Agreement, Agency acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes. Nothing contained in such documents shall limit any of the provisions of this Section or relieve Agency of its obligations to conduct a diligent inquiry hereunder, nor shall any such matters limit any of the provisions of Section 4.4 or Section 4.5.

4.4 "As Is" Purchase. EXCEPT FOR THE COMPLETION OF THE REMOVAL WORK AND THE COMPLETION OF THE SUBDIVISION TO BE DONE BY CITY, AGENCY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS CONVEYING AND AGENCY IS ACCEPTING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES, INCLUDING WITHOUT LIMITATION, ANY ZONING ORDINANCES, THE PLAN OR OTHER REGULATIONS GOVERNING THE USE, OCCUPANCY OR POSSESSION OF THE PROPERTY. AGENCY REPRESENTS AND WARRANTS THAT AGENCY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR AGENCY'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE, RULE OR REGULATION. THE AGENCY AGREES THAT NEITHER CITY NOR ANY OF CITY'S AGENTS HAVE MADE, AND CITY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY CONDITIONS.

4.5 Release of City With Regard to Hazardous Materials. As part of its agreement to accept the Property in its "As Is With All Faults" condition, Agency, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the past, present and future use of the Property by Agency or any of its Agents or Invitees, (ii) the physical, geological or environmental condition of the Property, including, without limitation, any Hazardous Material in, on, under, above or about the Property,

and (iii) any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, "RCRA") (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the "Clean Water Act") (33 U.S.C. Sections 1251 *et seq.*), the Toxic Substances Control Act ("TSCA") (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 *et seq.*), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the "California Superfund" law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 *et seq.*), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the "Business Plan Law") (California Health and Safety Code Section 25500 *et seq.*), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 *et seq.*), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (California Health and Safety Code Section 25249.5 *et seq.*). Notwithstanding anything to the contrary in the foregoing, Agency does not waive any claims that it may have against City if City fails to perform the Removal Work in compliance with its obligations under this Agreement.

In connection with the foregoing release, Agency expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

BY PLACING ITS INITIALS BELOW, AGENCY SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT AGENCY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: AGENCY:\_\_\_\_\_

#### 4.6 Hazardous Materials Indemnity.

(a) Agency, its successors and assigns (collectively, "**Indemnitor**"), shall indemnify, defend and hold City, its officers, employees, agents, successors, and assigns (collectively, "**Indemnitee**") harmless from and against any and all liabilities, losses, claims, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable consequential damages), response, remedial or inspection costs, and any expenses (including, but not limited to, attorney and consultant fees, laboratory costs and litigation costs) of whatever kind or nature, known or unknown, contingent or otherwise, which are incurred by or asserted against Indemnitee (other than by virtue of acts of Indemnitee) after the Closing Date and arise from or relate directly to (i) any Hazardous Materials from, in, on, under or affecting or otherwise resulting from operations or activities on the Property, (ii) migration of Hazardous Materials onto the Property from any contiguous property or onto any other property from the Property, (iii) past disposal of Hazardous Materials on the Property by any person, known or unknown, (iv) the removal, treatment, remediation or disposal of Hazardous Materials on or from the Property, and (v) any personal injuries or property damages, real or personal, any

violations of law or of orders, regulations, requirements or demands of governmental authorities, and any lawsuit brought or threatened, settlement reached or governmental order arising out of or in any way related to Hazardous Materials on, in, from under or affecting or otherwise resulting from operations or activities on the Property; provided, however, that the foregoing indemnity shall not apply to any matters arising from City's failure to complete the Removal Work in compliance with the conditions specified in this Agreement.

(b) Whenever requested by Indemnitor, Indemnitee shall give Indemnitor all reasonable aid in investigating the subject matter of a claim, securing evidence, obtaining witnesses, prosecuting or defending any action or proceeding, effecting settlement, and in any other lawful act which in the opinion of Indemnitor may be necessary or desirable in connection with the defense, compromise or settlement of any claim to which this Section applies. If Indemnitor is prejudiced by the failure of Indemnitee to furnish the required cooperation, Indemnitor's obligations under this Section shall terminate, including any liability or obligation to defend or continue any litigation with regard to the matter or matters requiring such cooperation. Under no circumstances shall Indemnitee be required to incur any expense in connection with its obligations hereunder.

(c) Within thirty (30) days following Indemnitor's receipt of notice from Indemnitee of the existence of a claim against Indemnitee, Indemnitor shall notify Indemnitee whether it accepts, denies or conditionally accepts the obligation to defend and indemnify Indemnitee against such claim.

(d) The agreement to indemnify, defend and hold harmless set forth in this Section is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Indemnitor may have to Indemnitee in this Agreement, at common law or otherwise.

(e) Indemnitee agrees to give prompt notice to Indemnitor with respect to any suit or claim initiated or threatened to be initiated against Indemnitee, and in no event later than the earlier of (a) twenty (20) days after valid service of process as to any filed suit or (b) sixty (60) days after receiving notification of the filing of such suit or the assertion of such claim, which Indemnitee has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice shall not be given to Indemnitor, then Indemnitor's liability hereunder shall terminate as to the matter for which such notice is not given, provided, that failure to notify Indemnitor shall not prejudice the rights of Indemnitee hereunder unless Indemnitor shall be prejudiced by such failure, and then only to the extent of such prejudice. Indemnitor shall, at its option but subject to the reasonable consent and approval of Indemnitee, be entitled to control the defense, compromise, or settlement of any such matter through counsel of Indemnitor's own choice; provided; however, that in all cases Indemnitee shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Indemnitor shall fail, however, in Indemnitee's reasonable judgment, within a reasonable time following notice from Indemnitee alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Indemnitee shall have the right promptly to hire counsel at Indemnitor's sole expense to carry out such defense, compromise, or settlement, which expense shall be immediately due and payable to Indemnitee upon receipt by Indemnitor of an invoice therefor.

4.7 Removal Work. If Closing occurs pursuant to this Agreement, City shall perform the Removal Work prior to the expiration of the Loop Construction Permit. City shall perform such work in compliance with all applicable laws and cause the work to be conducted and completed in a good and workmanlike manner. If City does not timely and properly perform such work, the Agency shall notify City of such failure in writing. If City does not perform the work in any of its obligations under this Agreement to remedy such failure, the Agency may, at its sole option, remedy such failure at City's expense by providing City with at least ten (10)

days' prior written notice of its intention to cure such failure (except that no such prior notice shall be required in the event of an emergency as determined by Agency, where Agency shall use reasonable efforts to notify City). Such remedial action by the Agency shall not be construed as a waiver of any its rights or remedies under this Agreement or under law or equity, and nothing herein shall imply any duty of the Agency to do any act that City is obligated to perform. City shall pay to the Agency upon demand, all costs, damages, expenses or liabilities incurred by the Agency in performing such remedial action, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. City's obligations under this Section shall survive the termination of this Agreement.

If City does not commence to perform the Removal Work within the Permit Term, the Agency shall have the right to require City to repurchase the Housing Parcel from the Agency in exchange for City's payment of an amount equal to the Purchase Price to Agency. If Agency exercises such right, it shall transfer fee ownership of the Housing Parcel to City, subject only to the encumbrances that existed as of the Closing Date, any encumbrances caused by City's actions at the Housing Parcel pursuant to the Loop Construction Permit, and any other encumbrances acceptable to City. If such transfer occurs, the Agency shall release City from any obligations or liabilities to Agency with respect to its failure to commence to timely perform the Removal Work and waive any claims that it might have against the City with respect to such failure.

## 5. CONDITIONS PRECEDENT

5.1 City's Condition Precedent. The following are conditions precedent to City's obligation to convey the Property to Agency ("**City's Conditions Precedent**"):

(a) Agency shall have performed all of its obligations hereunder required to be performed as of Closing;

(b) The Agency shall have approved the Final Legal Description, the Subdivision shall have been completed and the Housing Parcel shall be a separate legal parcel;

(c) The Board of Trustees of the San Francisco Community College District shall have approved of the Plaza Lease (as defined in the Phelan MOU) or, if another City department is to enter into the Plaza Lease in lieu of the San Francisco Community College District, such City department shall have due authority to do so;

(d) SFMTA's Board of Directors and City's Board of Supervisors shall have approved this Agreement and the Plaza Lease, SFMTA's Board of Directors shall have approved the Loop Construction Permit, and the City's Public Utilities Commission and any other affected City department shall have agreed on the jurisdictional transfers to SFMTA of the portions of the Property and other property located within the vicinity of the Property necessary for the Removal Work;

(e) Agency's Commission shall have duly approved of this Agreement and the Loop Construction Permit; and

(f) All of Agency's representations and warranties herein shall be true and correct; and

(g) All of the SFMTA Conditions (as defined in the Phelan MOU) shall have been timely fulfilled.

5.2 Failure of City's Conditions Precedent. Each of City's Conditions Precedent are intended solely for the benefit of City. If any of City's Conditions Precedent are not satisfied as

provided above, City may, at its option, terminate this Agreement. Upon any such termination, neither Party shall have any further rights or obligations hereunder except for the Surviving Obligations.

5.3 Agency's Conditions Precedent. The following are conditions precedent to Agency's obligation to accept the City's conveyance of the Property ("**Agency's Conditions Precedent**"):

- (a) The Agency shall have approved the Final Legal Description and the Property shall be a separate legal parcel;
- (b) City shall have performed all of its obligations hereunder required to be performed as of Closing;
- (c) There shall not be any condemnation, environmental or other pending governmental proceedings in respect of the Property arising after the Effective Date, which, in the Agency's reasonable determination, would materially and adversely affect Agency's intended uses of the Property or the value of the Property;
- (d) SFMTA's Board of Directors and City's Board of Supervisors shall have approved this Agreement and the Plaza Lease, SFMTA's Board of Directors shall have approved the Loop Construction Permit, and the City's Public Utilities Commission, and any other affected City department shall have agreed on the jurisdictional transfers of the portions of the Property and other property located within the vicinity of the Property necessary for the Removal Work;
- (e) Agency's Commission shall have duly approved of this Agreement and the Loop Construction Permit; and
- (f) All of City's representations and warranties herein shall be true and correct.

5.4 Failure of Agency's Conditions Precedent. Each of Agency's Conditions Precedent are intended solely for the benefit of Agency. If any of Agency's Conditions Precedent are not satisfied as provided above by the Closing Date, Agency may, at its option, terminate this Agreement. Upon any such termination, neither Party shall have any further rights or obligations hereunder except for the Surviving Obligations.

## 6. ESCROW AND CLOSING

6.1 Escrow. Within ten (10) days after delivery of the Effective Date, Agency and City shall deposit an executed counterpart of this Agreement with the Title Company to establish an escrow for the purchase and sale of the Property pursuant to this Agreement ("**Escrow**"). This Agreement shall serve as the instructions to the Title Company as the escrow holder for consummation of the conveyance contemplated hereby. City and Agency agree to execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, if there is any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

6.2 Closing Date. The consummation of the purchase and sale contemplated hereby (the "**Closing**") shall be held, and delivery of all items to be made at each Closing under the terms of this Agreement shall be made, at the offices of the Title Company on the thirtieth (30<sup>th</sup>) day immediately following the termination of the Funding Period, or if such date is not a

business day, on the next ensuing business day (the "**Closing Date**"); provided, however, that if the Subdivision has not been or will not be effected as of the Closing Date, the Closing Date shall be automatically extended to the third (3<sup>rd</sup>) business day immediately following the date that the Subdivision is effected. Except as set forth in the preceding sentence, the Closing Date may not be extended without the prior written approval of both City and Agency.

### 6.3 Deposit of Documents.

(a) At or before the Closing Date, City shall deposit into Escrow the following items:

(i) a certified copy of the resolution authorizing and approving the conveyance of the Property to the Agency in accordance with this Agreement duly adopted by the City's Board of Supervisors and Mayor;

(ii) an original copy of the Loop Construction Permit, duly executed by City;

(iii) an original Deed, duly executed by City and acknowledged, conveying the Property to Agency subject to the Conditions of Title; and

(iv) an original Pipeline Easement Agreement, duly executed by City and acknowledged.

(b) At or before the Closing Date, Agency shall deposit into Escrow:

(i) funds in an amount sufficient to pay the Purchase Price (less the Deposit credit) and any other costs to be paid by Agency under this Agreement;

(ii) an original copy of the Loop Construction Permit, duly executed by Agency;

(iii) the duly executed original of the Agency's Certificate of Acceptance of the Property to be attached to and recorded with the Deed; and

(iv) an original Pipeline Easement Agreement, duly executed by City and acknowledged.

(c) City and Agency shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the transfer of the Property in accordance with the terms hereof.

6.4 Prorations. Any real property taxes and assessments, water, sewer and utility charges, amounts payable under any service contracts, annual permits and/or inspection fees (calculated on the basis of the period covered), and any other expenses normal to the operation and maintenance of the Property, shall all be prorated as of 12:01 a.m. on the date the Deed is recorded, on the basis of a 365-day year. City and Agency hereby agree that if any of the above described prorations cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date and either Party owing the other Party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other Party.

## 7. RISK OF LOSS; CONDEMNATION



City shall notify Agency of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of any of the Property. If all or any portion of the Property is condemned, or destroyed, or damaged by fire, or other casualty prior to the Closing Date, then Agency may, at its option to be exercised within ten (10) days of City's notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, either terminate this Agreement or consummate the Closing as required by the terms hereof. If Agency so terminates this Agreement, this Agreement shall terminate at the end of such ten (10) day period, the Deposit shall be returned to the Agency, and neither Party shall have any further rights or obligations hereunder except for the Surviving Obligations.

If Agency elects to proceed with the purchase of the Property, then upon the Closing, Agency shall receive a credit against the Purchase Price payable hereunder equal to the amount of any insurance proceeds or condemnation awards actually collected by City as a result of any such damage or destruction or condemnation, plus the amount of any insurance deductible, less any sums expended by City toward the restoration or repair of the Property. If the proceeds or awards have not been collected as of the Closing, then City shall assign such proceeds or awards to Agency, except to the extent needed to reimburse City for sums expended to collect such proceeds or repair or restore the Property, and Agency shall not receive any credit against the Purchase Price with respect to such proceeds or awards. Notwithstanding anything to the contrary above, Agency acknowledges that City self-insures and shall not be obligated to purchase any third party comprehensive liability insurance or property insurance.

## 8. MAINTENANCE; CONSENT TO NEW CONTRACTS

8.1 Maintenance of the Property by City. Between the Effective Date and the Closing, City shall maintain the Property in good order, condition and repair, reasonable wear and tear excepted, and shall otherwise operate the Property in the same manner as before the making of this Agreement, as if City were retaining the Property. Save and except for any changes caused by any of the Removal Work or the Subdivision, City shall not make or permit any substantial change in the physical condition of the Property.

8.2 Monetary Encumbrances; New Contracts Affecting the Property; Termination of Existing Contracts. City shall not enter into any lease, or any amendment of an existing lease, affecting the Property which has a term longer than thirty (30) days in duration. If City enters into any such lease, City shall deliver to Agency, within five (5) days of execution thereof, written notice together with copies of the agreement and any other pertinent correspondence or documents relating thereto. City shall terminate prior to the Closing, at no cost or expense to Agency, any and all of City's management agreements, leases, contracts that permit any third party to enter on or use the Property or other occupancy agreements affecting the Property that Agency does not agree to assume in writing prior to the Closing, except to the extent that any such contracts are related to the performance of any of the Removal Work and will terminate no later than the expiration of the Construction Loop Permit.

## 9. EXPENSES

9.1 Expenses. Agency shall pay any transfer taxes applicable to the sale, any personal property taxes, recording charges, and any Escrow fees, costs or charges.

9.2 No Brokers or Finders. The Parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Agency or City, then the

Party through whom such person makes a claim shall defend the other Party from such claim, and shall indemnify the indemnified Party from, and hold the indemnified Party against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified Party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the Closing is not consummated for any reason, any termination of this Agreement.

## 10. DEFAULT; REMEDIES; LIQUIDATED DAMAGES

10.1 Demand. If either Party fails to perform such Party's obligations hereunder (except as excused by the other Party's default), the Party claiming default will make written demand for performance. If either Party fails to comply with such written demand within ten (10) days after receipt thereof, the Party claiming default will have the option to waive such default, to demand specific performance or to terminate this Agreement.

10.2 Discharge of Obligations. On any termination of this Agreement pursuant to this Section, except for the Surviving Obligations, the Parties will be discharged from any further obligations and liabilities under this Agreement.

10.3. Liquidated Damages. IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED DUE TO THE FAILURE OF ANY CONDITION PRECEDENT OR CITY'S DEFAULT HEREUNDER AND AGENCY IS NOT THEN IN DEFAULT, THEN THE CITY SHALL RETURN THE DEPOSIT TO AGENCY. IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY AGENCY HEREUNDER AND CITY IS NOT THEN IN DEFAULT, THEN THE CITY SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT CITY'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE AS SPECIFIED IN THE PRECEDING SENTENCE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT CITY WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: CITY: \_\_\_\_\_ AGENCY: \_\_\_\_\_

## 11. GENERAL PROVISIONS

11.1 Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to City: SFMTA  
City and County of San Francisco  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Kerstin Magary, Senior Manager, Real Estate

with a copy to: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

and to: Office of the City Attorney  
1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, CA 94102-4682  
Attn: Special Projects Team

If to Agency: Redevelopment Agency of the City and County  
of San Francisco  
One South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Fred Blackwell, Executive Director

with a copy to: Redevelopment Agency of the City and County  
of San Francisco  
One South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: James Morales, Agency General Counsel

or such other address as either Party may from time to time specify in writing to the other Party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

11.2 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, legal representatives, administrators and assigns. Agency shall have the right to assign all of its rights and obligations under this Agreement to MOH, or any other governmental entity or nonprofit organization with a mission of developing or providing affordable housing party designated by MOH in writing, at any time by providing City with written documentation, reasonably acceptable to SFMTA and duly signed by the Agency and MOH, evidencing such assignment and such other party's assumption of such rights and obligations. Agency's rights and obligations hereunder shall not be assignable to any other party without the prior written consent of City; provided, however, even if City approves any such proposed assignment, in no event shall Agency be released of any of its obligations hereunder.

If MOH assumes Agency's rights and obligations to this Agreement, all references to the purchase and sale of the Property shall be revised to refer to a jurisdictional transfer of the Property from SFMTA to MOH, references to the Deed shall be deleted, the Pipeline Easement Agreement shall be revised to be a non-recorded document that is filed with the City's Real Estate Division, references to "City" shall be revised to be references to "SFMTA", as applicable, and references to matters requiring approval by Agency's Commission shall be revised to refer to approval by MOH's Director.

11.3 Amendments. This Agreement may be materially amended or modified only by a written instrument signed by the Agency, based on approval by the Agency's Commission, and signed by the City, based on the approval of SFMTA Board of Directors and the City's Board of Supervisors and Mayor.

11.4 Authority of Parties. Agency and City each represent and warrant to the other Party that this Agreement and all documents and delivered at Closing: (a) are or at the time of Closing will be duly authorized, executed and delivered by that Party; (b) are or at the time of Closing will be legal, valid and binding obligations of that Party; and (c) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which that Party is a Party or to which that Party is subject. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of the Parties contained herein or in other agreements or documents executed by the Parties in connection herewith, shall survive the Closing Date.

11.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and City's Charter.

11.6 Merger of Prior Agreements. This Agreement, together with the exhibits hereto, contain any and all representations, warranties and covenants made by Agency and City and constitutes the entire understanding between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits hereto.

11.7 Parties and Their Agents. As used herein, the term "**Agent**" or "**Agents**" when used with respect to either Party shall include the agents, employees, officers, contractors and representatives of such Party, and the term "**Invitees**" shall mean any party with whom Agency is negotiating for the lease of the Housing Parcel for the construction and operation of an affordable housing project thereon, and such party's agents, employees, officers, contractors and representatives. Agency shall deliver written notice to City identifying each Invitee, and any other information reasonably requested by City for such named Invitee, and shall not permit any Invitee to perform any inspections at the Housing Parcel without first requiring that such Invitee duly execute and deliver a release in favor of City as to such entry, in the form provided by City.

11.8 Interpretation of Agreement. The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the Parties and this Agreement.

11.9 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

11.10 Time of Essence. Time is of the essence with respect to the performance of the Parties' respective obligations contained herein.

11.11 No Merger. The obligations contained herein shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

11.12 Non-Liability of City Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Agency, its successors and assigns, if there is any default or breach by City or for any amount which may become due to Agency, its successors and assigns, or for any obligation of City under this Agreement.

11.13 Tropical Hardwoods and Virgin Redwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

11.14 No Joint Venture. The relationship between City and Agency hereunder is solely that of transferor and transferee. None of the terms or provisions hereof shall be deemed to create a partnership between City and Agency, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

11.15 No Recording. Neither this Agreement nor any memorandum or short form thereof may be recorded by Agency or City.

11.16 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

11.17 Effective Date. As used herein, the term "**Effective Date**" shall mean the date on which this Agreement and the transactions contemplated hereby, including the Loop Construction Permit, are approved by each of the SFMTA's Board of Directors, the City's Board of Supervisors and Mayor, and the Agency's Commission, and that this Agreement is fully executed and delivered.

11.18 Surviving Obligations. The "**Surviving Obligations**" shall mean the obligations of a Party pursuant to Section 2.1, Section 4.2, Section 4.5, Section 4.6, Section 4.7, Section 9.2, or Section 10.3.

11.19 Conflicts of Interest. Through its execution of this Agreement, Agency acknowledges that it is familiar with the provisions of Section 15.103 or City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Agency shall immediately notify the City.

11.20 Sunshine Ordinance. Agency understands and agrees that under the City's Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) and the State Public Records Law (California Government Code Section 6250 *et seq.*), this Agreement, the Loop Construction Permit and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Agency hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection

with this Agreement.

11.21 MacBride Principles - Northern Ireland. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City also urges companies to do business with corporations that abide by the MacBride Principles. Agency acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

11.22 Acceptance by Agency. This Agreement shall be deemed accepted by the Agency on the date that execution hereof is authorized by the Agency's Commission.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, AGENCY ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS AND MAYOR SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

The Parties have duly executed this Agreement as of the respective dates written below.

**AGENCY:**

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic

Authorized by Agency Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 200\_

By: \_\_\_\_\_  
Amy Lee, Deputy Executive Director  
Finance and Administration

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
James Morales, Agency General Counsel

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
Nathaniel P. Ford Sr.  
Executive Director/CEO

Date: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong, Deputy City Attorney

San Francisco Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

EXHIBIT A

DESCRIPTION OF CITY PROPERTY

LEGAL DESCRIPTION EXHIBIT-A-

All that certain property within the City and County' of San Francisco, desaihed as follows:

PARCEL ONE:

ALL that certain property within Parcel 22 as shown in that certain deed from Spring Valley Water Company, to City and County of San Francisco recorded March 3, 1930 in Book 2002, Page 1 of Official Records, described as follows:

A tract of land bounded on the southerly side by the northerly line of Ocean Avenue, on the easterly side by the westerly line of Phelan Avenue and on the northerly and westerly sides by the subdivision known as Westwood Park, said tract being described as follows:

COMMENCING at the point of intersection of the northeasterly line of Ocean Avenue with the easterly line of that portion of Plymouth Avenue which lies south of Ocean avenue, If said easterly line be extended northerly along its present course, and running thence southeasterly along said northeasterly line of Ocean Avenue 592.788 feet; thence at an angle of  $0^{\circ} 26' 04''$  to the left 318.374 feet; thence along the northeasterly line of Ocean Avenue, as formerly laid out, at an angle of  $20^{\circ} 4'$  to the right 152.757 feet; thence at an angle of  $55^{\circ} 22' 45''$  to the right 34.017 feet; thence at an angle of  $89^{\circ} 59' 33''$  to the left 25.591 feet; thence leaving the line of Ocean Avenue, as formerly laid out, and running northerly at an angle of  $90^{\circ} 24' 30''$  to the left 33.527 feet to the Intersection of the northeasterly line of Ocean Avenue as now laid out, with the westerly line of Phelan Avenue ; thence northerly 1954.893 feet along the westerly line of Phelan Avenue, thence westerly at an angle of  $89^{\circ} 38' 42''$  to the left 1019.46 feet; and thence at right angles southerly along the easterly line of Plymouth Avenue, if produced as aforesaid, 1633.504 feet the northeasterly line of Ocean Avenue and the point of commencement.

EXCEPTING THEREFROM, all that certain property within the map entitled "Map Showing the Opening of the Northeast and Northwest corners of Ocean and Phelan Avenues" filed for record on April 19, 1937 in Book N of Maps at page 31.

FURTHER EXCEPTING THEREFROM, all that certain property within the map entitled, "Map showing the Widening of Phelan Avenue & Ocean Avenue from Ocean Avenue to Judson Avenue" Filed for record on February 15, 1954 in Book R of Maps, at page 56.

FURTHER EXCEPTING THEREFROM, all that certain property described in the deed from the City and County of San Francisco to the Roman Catholic Archbishop of San Francisco recorded June 14, 1933 in Book 2512, Page 415, Official Records.



FURTHER EXCEPTING THEREFROM, all that certain property described in the deed from the City and County of San Francisco to Safeway Stores Incorporated, a corporation recorded June 2, 1954 In Block 6386, Page 412, Official Records.

FURTHER EXCEPTING THEREFROM, all that certain property described in the deed from the City and County of San Francisco to San Francisco Community College District, a public entity recorded October 15, 1992 in Book F734, Page 746, Official Records.

**PARCEL TWO:**

Beginning at the point of intersection of the northeasterly line of Ocean Avenue with the easterly line of that portion of Plymouth Avenue which lies south of Ocean Avenue If said easterly line be extended northerly along its present course, said line bearing N 00° 24' 00"W and being the basis of bearings for this description;

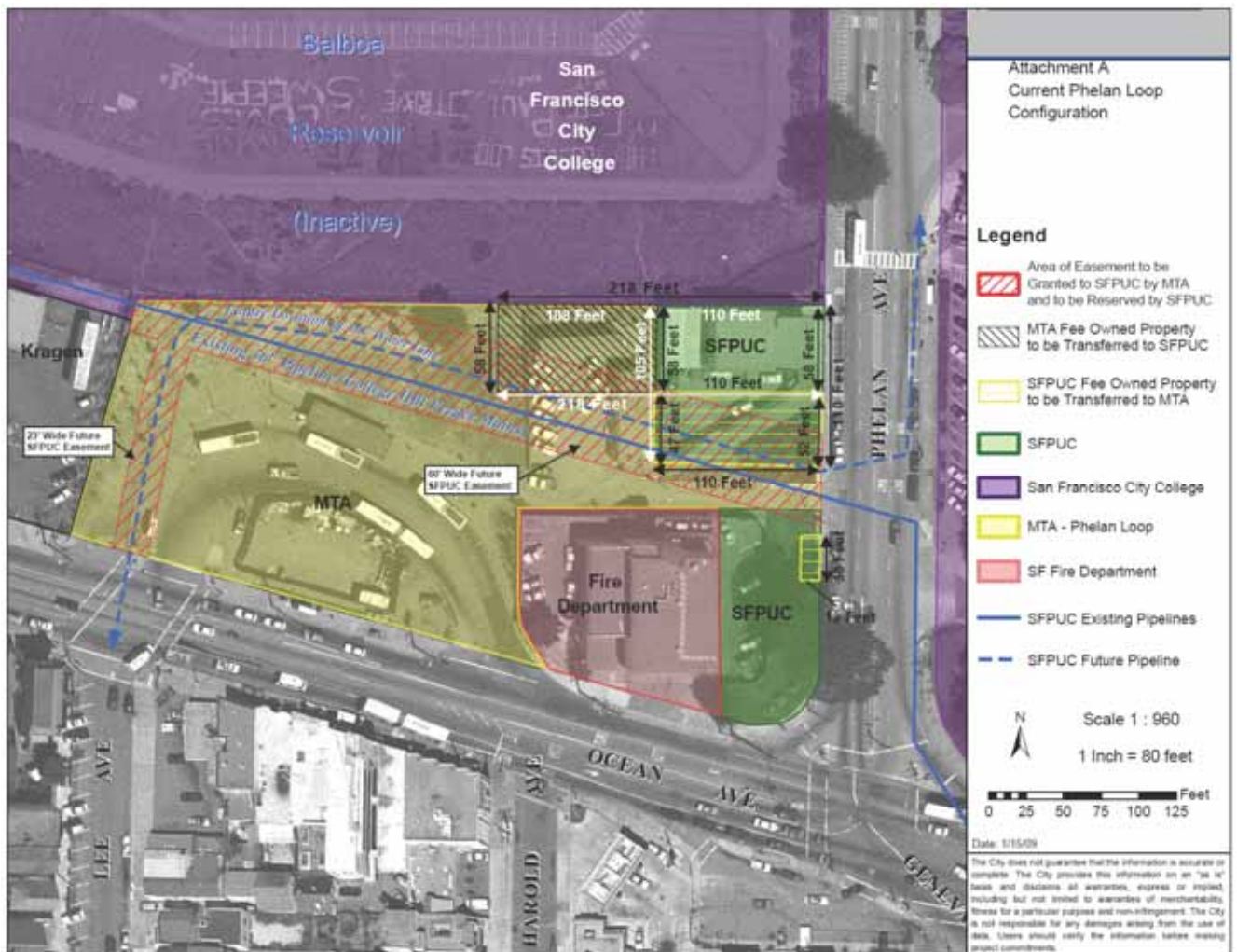
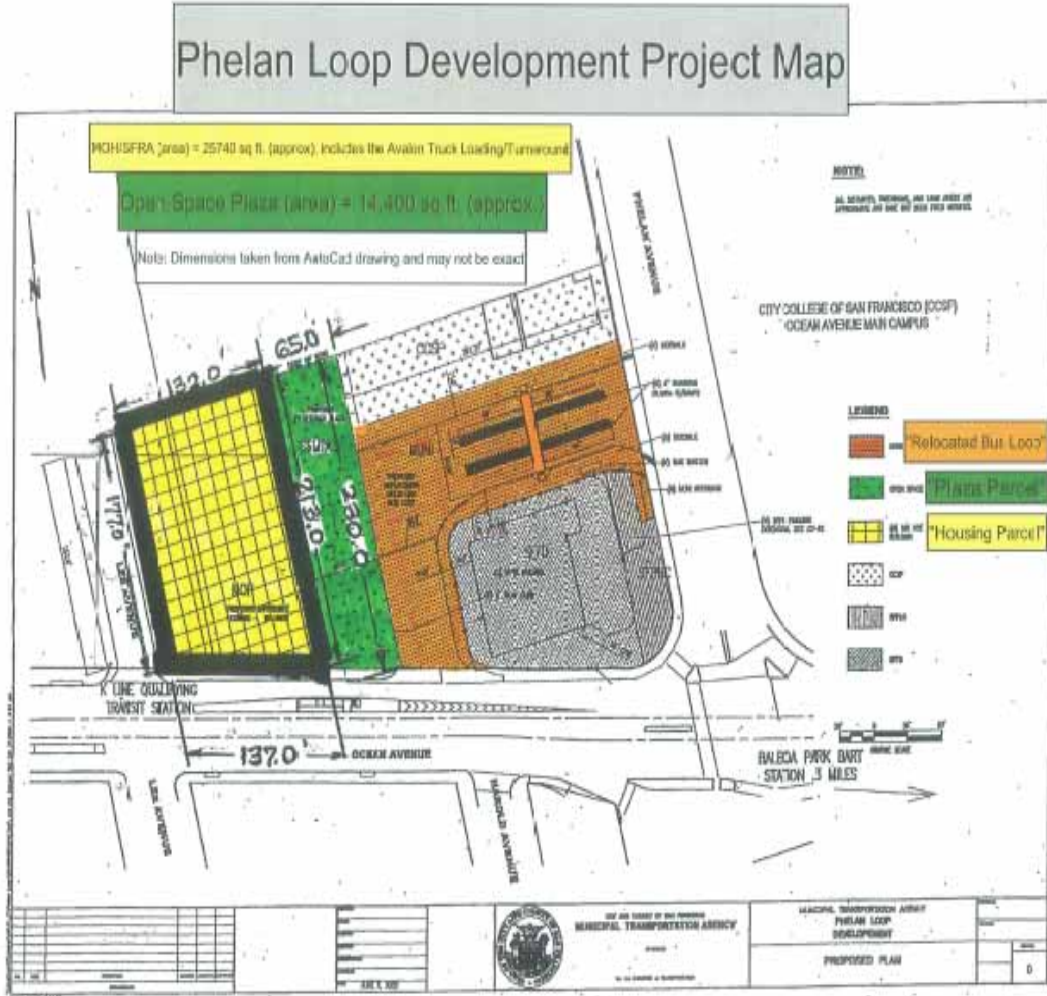


EXHIBIT B

DEPICTION OF HOUSING PARCEL



## EXHIBIT C

### DESCRIPTION OF REMOVAL WORK

- A. The Removal Work includes the following activities with respect to the Housing Parcel and other portions of the City Property:
- (i) Constructing a new bus loop, layover and pickup areas, performing related operational and design activities needed to reconfigure the bus loop, and removing certain improvements related to the existing bus loop;
  - (ii) Excavating approximately four feet (4') of contaminated soil located in an approximate ten foot (10') by thirty foot (30') area of the City Property on which the new bus loop improvements will be constructed, removing and disposing the excavated soil at a Class 2 land fill, and back filling the excavated area with clean soil;
  - (iii) Creating a legal description of the Housing Parcel and causing the Housing Parcel to become a separate legal parcel;
  - (iv) Providing for a new operator restroom;
  - (v) Performing traffic signals work for buses exiting new bus loop onto Phelan Avenue, and making firehouse modifications (upgrade an existing heating system and HVAC).
- B. Anticipated tasks regarding the bus loop, layover and pickup area construction and operational activities are further described below:
- New Bus Loop
- \* Construct new driveway, drop off, layover and pickup areas
  - \* Construct new pedestrian sidewalks
  - \* Construct two new boarding islands
  - \* Construct drainage and storm sewer system under loop
  - \* Construct new fence between the bookstore driveway and new sidewalk
  - \* Provide OCS for the new trolley bus layover
  - \* Remove existing OCS of the old trolley bus layover and along Ocean Avenue including poles not needed for trolley support or lighting
  - \* Provide visually contrasting pavement and tactile treatment within loop to delineate pedestrian path of travel
  - \* Provide power for lighting and bus shelters
  - \* Provide bollards to prevent runaway buses from entering open space
  - \* Provide appropriate landscaping
- Traffic Striping and Signalization
- \* Bus activated traffic signals for buses exiting loop onto Phelan Avenue
  - \* Connect pedestrian activated traffic signals at Cloud Circle/campus bookstore to Phelan Loop
  - \* Implement new permanent striping on Phelan Avenue from the bus loop exit to the Ocean/ Geneva intersection
  - \* Provide zebra striping for crosswalk crossing loop exit onto Phelan Avenue
  - \* Provide power to IC cabinet
  - \* Widening of Phelan Avenue southbound to include additional lane from bus loop exit to Ocean/Geneva Intersection (City's Division of Parking & Traffic is still investigating the impact of an additional lane and may require additional work)
- C. The Removal Costs also include the following project-related costs and fees:
- \* City's costs related to the appraisal of the Property prepared for the City by Carnegi-Blum & Partners, Inc., dated as of January 2007, the letter report to the

City's Department of Public Works that was prepared by Camp Dresser & McKee Inc. and dated June 4, 2008, and the Phase I Environmental Site Assessment prepared for the City's Department of Public Works by SCA Environmental, Inc. and dated March 5, 2007

- \* Any additional costs incurred by City to effect Closing
- \* Fees charged to SFMTA by the City's Real Estate Division and the City Attorney with respect to the relocation of the bus loop, the sale of the Housing Parcel to the Agency, the Phelan MOU or the Loop Construction Permit

D. A current budget for the estimated Removal Costs is as follows:

**Phelan Bus Loop**

	<b>Project Cost</b>
<b>Conceptual Engineering Phase</b>	
MTA	\$450,000
DPW	\$50,000
<b>TOTAL</b>	<b>\$500,000</b>
<b>Detail Design Phase</b>	
MTA-Development Section	\$450,000
DPT Design of Cross Walk and Signal on Phelan	\$75,000
Others	\$80,000
DPW- BOA	\$180,000
BOE Electrical Section	\$67,000
BOE Mechanical Section	\$73,000
BOE Structural Section	\$65,000
BOE Landscape Architecture	\$60,000
BOE Hydraulic Section	\$30,000
BOE Streets & Highways	\$45,000
Disability Access Coordinator	\$7,000
BSM Survey	\$15,000
Other City Staff City Attorney	\$75,000
Other City Staff Real Estate	\$75,000
<b>TOTAL</b>	<b>\$1,267,000</b>
DD Phase Contingency – 30%	\$380,100
<b>Total Cost for Detail Design Phase</b>	<b>\$1,647,100</b>
<b>Construction Phase</b>	
Construction Contractor	\$4,100,000
Construction DPT (roadway, signage, striping)	\$50,000
MTA – Development Section	\$850,000
MTA – DPT	\$50,000
MTA – Operations Support	\$150,000
<b>TOTAL</b>	<b>\$5,200,000</b>
Construction Phase Contingency – 20%	\$1,040,000
<b>Total Cost for Construction Phase</b>	<b>\$6,240,000</b>
<b>Sub-Total Project (Detail Design and Construction) Cost</b>	<b>\$7,887,100</b>
Escalation to Mid-Point of Construction (3 years) 2007 – 10%	\$788,710
<b>Total Phelan Loop Project Cost</b>	<b>\$9,176,000</b>

EXHIBIT D

FORM OF QUITCLAIM DEED

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Redevelopment Agency  
of the City and County of San Francisco  
One South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103

MAIL TAX STATEMENTS TO:

Same address as above

Documentary Transfer Tax of \$0, based on full value of the property conveyed.

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(Space above this line reserved for Recorder's use only)

QUITCLAIM DEED

(Lot \_\_, Block \_\_\_ in San Francisco, California)

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), pursuant to Resolution No. 824-01, adopted by the Board of Supervisors on October 22, 2001, and approved by the Mayor on November 2, 2001, hereby RELEASES, REMISES AND QUITCLAIMS to the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic established pursuant to the Community Redevelopment Law of the State of California ("Grantee"), any and all right, title and interest City may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
AMY BROWN  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

State of California                    )  
  ) ss  
County of San Francisco            )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature \_\_\_\_\_                    (Seal)

EXHIBIT E

FORM OF PIPELINE EASEMENT AGREEMENT

Free Recording Requested Pursuant to  
Government Code Section 27383

Recording requested by and  
when recorded mail to:

City and County of San Francisco  
San Francisco Public Utilities Commission  
Director of Real Estate Services  
Public Utilities Commission  
1145 Market Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103

with a copy to:

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

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(Space above this line reserved for Recorder's use only)

PIPELINE EASEMENT AGREEMENT  
(Portion of Assessor's Parcel Block No. 3180, Lot 1) [**to be confirmed**]

This Pipeline Easement Agreement (this "**Agreement**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic established pursuant to the Community Redevelopment Law of the State of California ("**Agency**"), is executed as of \_\_\_\_\_ (the "**Effective Date**").

RECITALS

- A. City owns and operates two (2) thirty-six inch (36") diameter water transmission pipelines (the "**Pipelines**") on the real property described on the attached Exhibit A (the "**Phelan Property**").
- B. Immediately prior to the recordation of this Agreement, City owned the Phelan Property, and City agreed to transfer the Phelan Property to Agency on the express condition that Agency immediately grant City a pipeline easement over the portion of the Phelan Property described on the attached Exhibit B (the "**Pipeline Easement Area**") on the terms and conditions specified in this Agreement.
- C. Agency accepted the Phelan Property from City pursuant to such condition, and the parties wish to enter into this Agreement to set forth the terms of such pipeline easement.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Easement. Pursuant to the terms and conditions specified in this Agreement, Agency grants to City a pipeline easement (the "**Pipeline Easement**") over, across, in, and on the Pipeline Easement Area for the Pipelines and all appurtenances and appliances related thereto, including, but not limited to, casings, casements, sleeves, valves, braces, concrete vaults, fittings, and cathodic protection (collectively, the "**Pipeline Facilities**").
2. Permitted Uses. City shall have the right to access, install, construct, operate, maintain, use, repair and replace the Pipeline Facilities, to take all activities reasonably necessary to protect the Pipeline Facilities, and to exercise its rights and obligations set forth in this Agreement (collectively, the "**Permitted Uses**"). The Pipeline Facilities shall remain City's property at all times and City shall have the right to remove, or take out of active service, any or all of the Pipeline Facilities at any time and for any length of time.
3. Construction Activities and Uses.
  - (a) City's exercise of the Permitted Uses may result in the damage, removal or trimming of trees and landscaping, including shrubs, flowers, plants, and grass. City shall have no obligation to replace any such affected grass, trees or landscaping.
  - (b) While conducting any construction or maintenance activities pursuant to its rights under this Agreement, City may restrict access to Pipeline Easement Area to protect the health and safety of the public, and Agency shall cooperate with such restrictions.
  - (c) City shall deliver written notice to Agency at least five (5) business days prior to commencing any work in the Pipeline Easement Area, except in the event of any immediate danger to health or property, in which case City shall verbally notify Agency as soon as reasonably possible. City shall deliver written notice to Agency at least thirty (30) calendar days prior to City's planned commencement of construction activities in the Pipeline Easement Area, together with any plans and specifications prepared by City for such construction activities.
4. Agency Use of the Pipeline Easement Area. Agency shall not do anything in, on, under or about the Pipeline Easement Area that could damage, endanger or interfere with the Pipeline Facilities or could interfere with the Permitted Uses. Without limiting the foregoing, Agency shall not undertake or permit any of the following activities within the Pipeline Easement Area without first obtaining the City's prior written consent, which consent shall not be unreasonably withheld: (i) plant or replant trees or shrubs; (ii) construct or place any structures or improvements of any kind or character, including, but not limited to, any pavement, asphalt or similar impermeable ground cover; (iii) operate or place vehicles or equipment in excess of the standards established by AASHTO-H20; or (iv) perform any excavation.
5. Maintenance and Repair. City will install, operate, maintain, repair and, at its sole election, replace or remove, the Pipeline Facilities at its sole cost; provided, however, that if any repair or replacement work arises from the actions of Agency or any Agents (as defined in Section 6) of Agency, Agency shall reimburse City for the cost of such repair or replacement work, and any resulting costs incurred by City if such actions impact the transmission and delivery of water, within thirty (30) days following City's written demand therefor. City shall keep the Pipeline Easement Area free from any liens arising out of any work performed, material furnished, or obligations incurred by or for City therein pursuant to this Agreement, and City shall maintain the Pipeline Facilities in a safe, secure, and sanitary condition at all times, even if



damaged by casualty.

City, at its sole expense, shall comply with all applicable laws, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force with respect to City's activities in the Pipeline Easement Area. City shall conduct, or shall cause its Agents to conduct, all activities in the Pipeline Easement Area in a safe and reasonable manner. After any entry by City in the Pipeline Easement Area, City shall restore any affected portion of the Pipeline Easement Area to substantially the same condition and grade it was in immediately prior to such entry (to the extent that such condition complies with the conditions set forth in this Agreement), provided that City shall have no obligation to remove any grass, landscaping or trees, as further specified in Section 3(a). If any portion of the Phelan Property or any improvements, fixtures, equipment, or personal property thereon is damaged by the activities of City or any City Agents, City shall immediately, at its sole cost, repair any and all such damage.

6. Hazardous Materials. Neither party shall use, store, locate, handle or cause or permit the dumping or other disposal or release on or about the Pipeline Easement Area of any Hazardous Material. Unless caused by the activities of City or its Agents, if there is a leakage or spill of Hazardous Materials on the Pipeline Easement Area, Agency shall bear the cost and expense to clean the contaminated property in compliance with applicable laws.

**"Hazardous Material"** means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Pipeline Easement Area or are naturally occurring substances in the Pipeline Easement Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Pipeline Easement Area.

If either party defaults in its obligations under this Section, then such defaulting party shall indemnify, defend and hold harmless the other party against any and all Claims (defined as follows) arising at any time as a result of such default, except to the extent the other party or its Agents (defined as follows) are responsible for such Claims. **"Claims"** shall mean all demands, claims, legal or administrative proceedings, liabilities, losses, costs, penalties, expenses, fines, liens, judgments, damages and liabilities of any kind, and **"Agents"** shall mean a party's officers, agents, employees, representatives, trustees or contractors. Each party's foregoing indemnity obligation shall survive the termination or extinguishment of this Agreement or the Pipeline Easement.

7. Insurance. Agency acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Agreement. City assumes the risk of damage to any of its personal property, except for any damage caused by Agency or its Agents.

8. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service



consequential, incidental or punitive damages. City would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its agents, and Agency expressly assumes the risk with respect thereto

Accordingly, as a material part of the consideration for this Agreement, Agency fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims, and covenants not to sue, City or its Agents for any matters arising out of this Agreement or the Pipeline Easement Area, except to the extent such Claims result from the negligence and willful misconduct of City or its Agents or the failure of City to perform its indemnification obligations pursuant to this Agreement. In connection with the foregoing release, Agency acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Agency acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Agency realizes and acknowledges that it has agreed to this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

(b) Except for any indemnification obligations of Agency pursuant to this Agreement, City covenants and agrees that Agency shall not be responsible for or liable to City for, and City hereby waives all rights against Agency and its agents and releases Agency and its Agents from, any and all Claims relating to any injury, accident or death of any person or loss or damage to any property, in or about the Pipeline Easement Area, from any cause whatsoever. Nothing herein shall relieve Agency from liability to the extent caused by the negligence or willful misconduct of Agency or its Agents, but Agency shall not be liable under any circumstances for any consequential, incidental or punitive damages. Agency would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of Agency or its agents, and City expressly assumes the risk with respect thereto. Accordingly, as a material part of the consideration for this Agreement, City fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims, and covenants not to sue, Agency or its Agents for any matters arising out of this Agreement or the Pipeline Easement Area, except to the extent such Claims result from the negligence and willful misconduct of Agency or its Agents or the failure of Agency to perform its indemnification obligations pursuant to this Agreement. In connection with the foregoing release, City acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

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11. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the successors and assigns of the parties hereto. This Agreement is for the exclusive benefit of Agency and City and their respective successors and assigns and not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Pipeline Easement Area to or for the benefit of the general public.

12. As Is Condition. CITY ACCEPTS THE PIPELINE EASEMENT AREA PURSUANT TO THIS AGREEMENT IN ITS "AS IS" CONDITION, AND ACKNOWLEDGES AND AGREES THAT NEITHER AGENCY NOR ANY OF ITS AGENTS HAVE MADE, AND AGENCY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PIPELINE EASEMENT AREA. Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules, and ordinances governing the use of the Pipeline Easement Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Pipeline Easement Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is City's sole obligation to conduct an independent investigation of the Pipeline Easement Area and all matters relating to its use hereunder, including, without limitation, the suitability of the Pipeline Easement Area for such uses. The City, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for such party to make use of the Pipeline Easement Area in the manner contemplated hereby.

13. MacBride Principles – Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Agency acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

14. Tropical Hardwood and Virgin Redwood Ban. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

15. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Agency and recorded in the Official Records of the City and County of San Francisco. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This Agreement contains the entire agreement between the parties with respect to the Pipeline Easement and all prior negotiations, discussions, understandings and agreements are merged herein. (d) This Agreement shall be governed by California law and City's Charter. (e) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in City with comparable experience, notwithstanding City's or Agency's use of its own attorneys. (f) This Agreement does not create a partnership or joint venture between City and Agency as to any activity conducted by Agency on, in or relating to the Pipeline Easement Area. (g) City's obligations hereunder are contingent upon approval of this instrument by City's Public Utilities Commission and the City's Board of Supervisors and Mayor, each in their respective sole discretion, and the Pipeline Easement and this Agreement shall be null and void if such approval is not obtained, and Agency's obligations hereunder are contingent upon approval of this instrument by the Agency's Board of Trustees, in its sole discretion, and the Pipeline Easement

and this Agreement shall be null and void if such approval is not obtained. (h) Time is of the essence of this Agreement and each party's performance of its obligations hereunder. (i) All representations, warranties, waivers, releases, indemnities and surrender obligations given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the Pipeline Easement. (j) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement. (k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement. (l) Agency represents and warrants to City that the execution and delivery of this Agreement by Agency and the person signing on behalf of Agency below has been duly authorized, and City represents and warrants to Agency that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**AGENCY:** REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic

Authorized by Agency Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 200\_ By: \_\_\_\_\_  
Amy Lee, Deputy Executive Director  
Finance and Administration

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
James Morales  
Agency General Counsel

**CITY:** CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

State of California                    )  
  ) ss  
County of San Francisco            )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**Exhibit A**

**Legal Description of Phelan Property**



**Exhibit B**

**Legal Description of Pipeline Easement Area**

EXHIBIT F

FORM OF LOOP CONSTRUCTION PERMIT

**PERMIT TO ENTER**

**THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO**, a public body, corporate and politic (“**Agency**”) grants to City and County of San Francisco Municipal Transportation Agency (“**SFMTA**” or “**Permittee**”), a non-exclusive permit to enter upon certain Agency-owned real property (the “**Agency Property**”) located on Ocean Avenue between Lee Avenue and Harold Avenue in San Francisco, California, upon the terms, covenants and conditions hereinafter set forth in this Permit to Enter (“**Permit**”).

**1. Permit Area:** The "**Permit Area**" is the portion of the Agency Property depicted on Attachment A hereto and made a part hereof. The Permit is non-exclusive and is subject to the rights of ingress and egress by the Agency and its agents for due diligence investigations related to the future development of a mixed-use project with affordable housing on the Agency Property, provided neither Agency nor its agents shall exercise such rights in a manner that interferes with SFMTA's performance of any aspect of the Interim Use (as defined in Section 2) or increases SFMTA's costs to perform any aspect of the Interim Use. If Agency intends, or intends to permit its agent, to enter or use the Permit Area for such due diligence investigations, Agency shall provide SFMTA with at least five (5) business days' prior written notice of such intended entry or use. Agency acknowledges that the entry on or use of the Permit Area by Agency or its agents shall be subject to reasonable restrictions requested by SFMTA to protect the safety of its employees and passengers and to maintain its efforts to provide reliable public transit services.

**2. Interim Use:** The Permittee shall use the Permit Area only for the following purposes (collectively, the "**Interim Use**"): to use, maintain, and repair the bus loop, boarding area and temporary parking area currently located on the MTA Parcel, and to remove the existing improvements in the Permit Area used to operate, maintain or repair such bus loop, boarding area and temporary parking area (collectively, the "**Existing Bus Improvements**") in the manner generally described on Attachment B hereto, which is made a part hereof (collectively, the "**Removal Work**"). The Interim Use may include, but shall not be limited to, the following activities: the operation of Permittee's bus services and transit operations, including driving busses on and through the Permit Area, the parking of busses, the loading and unloading passengers, performing minor bus repairs, removing fares from busses, parking meter collection and maintenance, performing repairs and maintenance to Permittee's overhead contact system used for its operation of busses, and the presence of personnel related to the above activities. Prior to commencing any of the Removal Work, Permittee shall provide a detailed description of the Removal Work and any plans and specifications developed for the Removal Work to Agency for final approval, which approval shall not be unreasonably withheld or delayed.

**3. Time of Entry:** Entry may commence, once the Permit is fully executed, on \_\_\_\_\_, at 12:00 a.m. Entry shall terminate on \_\_\_\_\_, at 5:00 p.m., unless earlier terminated by Permittee by cessation of activities/operations, or unless such time is extended by the Executive Director and SFMTA consents to such extension in writing.

**4. Compensation to Agency:** Permittee shall pay compensation to the Agency:

YES

NO XX

If yes is checked, Permittee shall pay the Agency:

One cent (\$ 0.01) per square foot per day for duration of the permit to enter or

\$\_\_\_\_\_ per day pursuant to Section 9 Reduction or Waiver of Use Fee of the Agency's Permit to Enter Policy.

(Executive Director's initials authorizing fee reduction/waiver). \_\_\_\_\_  
initials

**5. Indemnification:**

a. General Indemnification: Permittee shall defend, hold harmless and indemnify the Agency and/or their respective commissioners, members, officers, agents and employees (each, an "**Agency Party**") of and from any and all claims, demands, losses, costs, expenses, obligations, damages, injuries, actions, causes of action and liabilities of every kind, nature and description directly or indirectly, arising out of or connected with this Permit and any of the Permittee's operations or activities related thereto, and excluding the willful misconduct or gross negligence of any Agency Party, and excluding any and all claims, demands, losses, costs, expenses, obligations, damages, injuries, action, causes of action or liabilities of any kind arising out of any Release (as defined in Section 6f below) or threatened release of any Hazardous Substance (as defined in Section 6d below), pollutant, or contaminant, or any condition of pollution, contamination, or nuisance which shall be governed exclusively by the provisions of Section 6c below. This section does not apply to contracts for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8.

b. No Mechanics' Liens: Permittee shall not permit any mechanics' or other liens to be levied against the Permit Area for any labor or material furnished to Permittee or claimed to have been furnished to Permittee or to Permittee's agents or contractors in connection with the Interim Use and Permittee shall hold the Agency free and harmless from any and all cost or expense connected with or arising from the Interim Use, except to the extent that any such cost or expense is caused by the willful misconduct or gross negligence of any Agency Party or any Agency contractor or permittee.

**6. Hazardous Material Acknowledgement and Indemnification:**

a. Hazardous Material Acknowledgement: Permittee recognizes that, in entering upon the Permit Area and performing the Interim Use under this Permit, its employees, invitees, contractors, subpermittees and subcontractors may be working with, or be exposed to substances or conditions which are toxic or otherwise hazardous. Permittee acknowledges that the Agency is relying on the Permittee to identify and evaluate the potential risks involved and to take all appropriate precautions to avoid such risks to its employees, invitees, contractors, subpermittees and subcontractors. Permittee agrees that it is assuming full responsibility for ascertaining the existence of such risks, evaluating their significance, implementing appropriate safety precautions for its employees, invitees, contractors, subpermittees and subcontractors and making the decision on how (and whether) to enter upon the Permit Area and carry out the Interim Use, with due regard to such risks and appropriate safety precautions.

b. Proper Disposal of Hazardous Materials: Permittee assumes sole responsibility for managing, removing and properly disposing of any waste produced during or in connection with Permittee's entry and/or Interim Use of the Permit Area including, without limitation, preparing and executing any manifest or other documentation required for or associated with the removal, transportation

c. Toxics Indemnification: Permittee shall defend, hold harmless and indemnify the Agency and its respective commissioners, members, officers, agents and employees from and against any and all claims, demands, actions, causes of action or suits (actual or threatened), losses, costs, expenses, obligations, liabilities, or damages, including interest, penalties, engineering consultant and attorneys' fees of every kind, nature and description, resulting from any release or threatened release of a hazardous substance, pollutant, or contaminant, or any condition of pollution, contamination, or nuisance in the vicinity of the Permit Area or in ground or surface waters associated with or in the vicinity of the Permit Area to the extent that such release, threatened release, or condition is directly created or aggravated by the Interim Use undertaken by Permittee pursuant to this Permit or by any breach of or failure to duly perform or observe any term, covenant or agreement in this Permit to be performed or observed by the Permittee, including but not limited to any violation of any Environmental Law (as defined in Section 6e below); provided, however, that Permittee shall have no liability, nor any obligation to defend, hold harmless or indemnify any person for any claim, action, loss, cost, liability, expense or damage resulting from the discovery or disclosure of any pre-existing condition on or in the vicinity of the Permit Area; and provided further that Permittee shall be held to a standard of care no higher than the standard of care applicable to environmental and geotechnical professionals in San Francisco.

d. Hazardous Substances: For purposes of this Permit, the term "Hazardous Substance" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U. S. C. Section 9601(14), and in addition shall include, without limitation, petroleum, (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs" or "PCB"), PCB-containing materials, all hazardous substances identified at California Health & Safety Code Sections 25316 and 25281(h), all chemicals listed pursuant to California Health & Safety Code Section 25249.1(d), and any substance deemed a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under applicable state or local law.

e. Environmental Laws: For purposes of this Permit, the term "Environmental Laws" shall include but not be limited to all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee and community right-to-know requirements, related to Permittee's performance of the Interim Use.

f. Release: For purposes of this Permit, the term "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance or pollutant or contaminant).

g. Soils Investigation: If the Interim Use includes any soils investigations, then Permittee warrants as follows:

(1) If any soils investigation permitted hereby involves the drilling of holes having a diameter dimension that could create a safety hazard for persons, said holes shall during any drilling operations be carefully safeguarded and shall upon the completion of said drilling operations be refilled (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling.

(2) The Agency has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Permit Area. Permittee has the sole responsibility to locate the same and to protect the same from damage. Permittee shall be solely responsible for any damage to utilities or damage resulting from any damaged utilities. Prior to the start of the Interim Use, the Permittee is advised to contact Underground Services Alert for assistance in locating existing utilities at (800) 642-2444. Any utility conduit or pipe encountered in excavations not identified by Underground Services Alert shall be brought to the attention of the Agency's Engineer immediately.

(3) All soils test data and reports prepared based thereon, obtained from these activities shall be provided to the Agency upon request and the Agency may use said data for whatever informational purposes it deems appropriate, including making it available to others for use in connection with any development. Such data, reports and Agency informational use shall be without any charge to the Agency.

(4) Any hole drilled shall, if not refilled and compacted at the end of each day's operation, be carefully safeguarded and secured after the completion of each day's work, as shall the drilling work area and any equipment if left on the Permit Area.

7. **Insurance:** The Parties acknowledge and agree that the SFMTA self-insures in the areas of general liability, automobile liability and workers' compensation and that such self-insurance shall be applied to any losses, claims or damages incurred by the Agency as a result of SFMTA's activities under this Agreement.

SFMTA shall require any contractors or subcontractors performing any of aspect of the Interim Use to maintain the following insurance: general liability (\$1,000,000 per occurrence), automobile liability (\$1,000,000 per accident) and workers' compensation (as required by the State of California). General liability and auto liability policies must name the following as additional insured: "San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees".)

8. **"As Is", Maintenance, Restoration, Vacating:** The Permit Area is accepted "AS IS" and entry upon the Permit Area by Permittee is an acknowledgment by Permittee that all dangerous places and defects in said Permit Area are known to it and are to be made secure and kept in such secure condition by Permittee. Permittee shall maintain the Permit Area so that it will not be unsafe, unsightly or unsanitary (to the extent such standards are reasonably applicable to the Interim Use). Upon termination of the Permit, Permittee shall vacate the Permit Area and remove any and all of its personal property located thereon and leave the Permit Area in a broom clean condition, with the Existing Bus Improvements removed therefrom. The Agency shall have the right to dispose of any property left by Permittee after it has vacated the Permit Area after providing no less than five (5) business days' prior written notice of such planned disposal. Agency makes no representations or warranties, express or implied, with respect to the environmental condition of the Permit Area or the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any Environmental Laws, and gives no indemnification, express or implied, for any costs of liabilities arising out of or related to the presence, discharge, migration or Release or threatened Release of the Hazardous Substance in or from the Permit Area.

9. **Compliance With Laws:**

a. Compliance with all Laws: All activities and operations of the Permittee and/or its agents, contractors or employees or authorized entries under this Permit shall be in full compliance with all applicable laws and regulations of the federal, state and local governments.

b. Nondiscrimination: The Permittee herein covenants for himself or herself and for all persons claiming in or through him or her that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, gender identity, marital or domestic partner status, disability (including AIDS or HIV status), national origin or ancestry in the use, occupancy or enjoyment of the Permit Area.

10. Security of Permit Area: There is an existing fence with gates around the Permit Area:  
Yes  No

If "Yes" is checked above, Permittee shall maintain said fence in good condition and repair any damage caused by Permittee or as a result of the Interim Use. Permittee may relocate the fence as needed, provided that the fence is restored to its original condition upon termination of the permit. During the term of the Permit, the Permittee shall keep the Permit Area in a safe condition at all times. Agency acknowledges the Permit Area is currently used by pedestrians and that such public use may continue during the term of the Permit.

11. [Intentionally deleted]

12. Entry under Permittee Authority: The Permit granted Permittee for the Interim Use shall mean and include all subpermittees, agents, contractors, subcontractors and employees of the Permittee. In this regard, Permittee assumes all responsibility for the safety of all persons and property and any contents placed in the Permit Area pursuant to this Permit except to the extent that any unsafe conditions are caused by, or any property or contents are placed in the Permit Area, by any Agency Party or any Agency contractor or permittee. Except for such activities by any Agency Party or any Agency contractor or permittee, all Interim Use activities performed in the Permit Area and all persons entering the Permit Area and all property and equipment placed therein in furtherance of the permission granted herein is presumed to be with the express authorization of the Permittee.

13. Governing Law: This Permit shall be governed by and interpreted under the laws of the State of California.

14. Attorneys' Fees: In any action or proceeding arising out of this Permit, the prevailing party shall be entitled to reasonable attorneys' fees and costs. For purposes of this Permit, the reasonable fees of attorneys of either party shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the attorney's services for either party were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the San Francisco City Attorney's Office.

15. Supplementary Provisions:

a. Is additional insurance required? Yes  No

Additional Insurance: If "Yes" is checked above, Permittee shall obtain additional insurance consisting of insurance protecting against loss or damage to real and personal property caused by fire, water, theft, vandalism, malicious mischief or windstorm, and any other causes contained in standard policies of insurance. Permittee shall supply such insurance in an amount of not less than the replacement value of the buildings and improvements on the Permit Area, evidenced by a policy of insurance and/or certificate

b. Is a fence and gate required? Yes  No

Fence and Gate: If "Yes" is checked above, the Permittee shall, at its expense, erect a fence (with gate) securing the Permit Area before entry on the Permit Area and shall maintain said fence and gate in good condition and repair during the Time of Entry as defined in Section 3. Said fence and gate erected by Permittee shall constitute the personal property of Permittee.

c. Is security personnel required? Yes  No

Security Personnel: If "Yes" is checked above, Permittee shall provide necessary security personnel at its own expense to prevent unauthorized entry into Permit Area during:

Daytime: Yes  No  Nighttime: Yes  No

d. Will subpermittees use the Permit Area? Yes  No

Subpermittees: If "Yes" is checked above, each Subpermittee shall execute this Permit by which execution each such Subpermittee agrees to all of the terms, covenants and conditions hereof. However, Subpermittees may be covered under Permittee's insurance in lieu of obtaining and maintaining separate insurance pursuant to Section 7(g). As additional Subpermittees are identified for various aspects of the Interim Use hereunder, they shall execute this Permit, if still valid, or a new permit to enter, before entering the Permit Area or commencing operations therein.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in triplicate as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

**PERMITTEE**  
**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation, acting by and through its  
San Francisco Municipal Transportation Agency

By: \_\_\_\_\_  
Nathaniel P. Ford Sr.  
Executive Director/CEO

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney  
By: \_\_\_\_\_  
Carol Wong, Deputy City Attorney

**REDEVELOPMENT AGENCY OF THE CITY**  
**AND COUNTY OF SAN FRANCISCO,**  
a public body, corporate and politic

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Amy Lee  
Deputy Executive Director  
Finance and Administration

By: \_\_\_\_\_  
James B. Morales  
Agency General Counsel

## **Removal Work**

Anticipated tasks regarding the bus loop, layover and pickup area construction and operational activities on the Premises are described below.

### **New Bus Loop**

- \* Construct new driveway, drop off, layover and pickup areas on adjacent City property
- \* Construct new pedestrian sidewalks on adjacent City property
- \* Construct two new boarding islands on adjacent City property
- \* Construct drainage and storm sewer system under loop on adjacent City property
- \* Construct new fence between the bookstore driveway and new sidewalk on adjacent City property
- \* Provide OCS for the new trolley bus layover on adjacent City property
- \* Remove existing OCS of the old trolley bus layover on Premises and along Ocean Avenue including poles not needed for trolley support or lighting
- \* Provide visually contrasting pavement and tactile treatment within new loop on adjacent City property to delineate pedestrian path of travel
- \* Provide power for new lighting and bus shelters on adjacent City property
- \* Provide bollards on adjacent City property to prevent runaway buses from entering open space
- \* Provide appropriate landscaping on adjacent City property

### **Traffic Striping and Signalization**

- \* Bus activated traffic signals for buses exiting loop onto Phelan Avenue
- \* Connect pedestrian activated traffic signals at Cloud Circle/campus bookstore to Phelan Loop
- \* Implement new permanent striping on Phelan Avenue from the bus loop exit to the Ocean/ Geneva intersection
- \* Provide zebra striping for crosswalk crossing loop exit onto Phelan Avenue
- \* Provide power to IC cabinet
- \* Widening of Phelan Avenue southbound to include additional lane from bus loop exit to Ocean/Geneva Intersection (City's Division of Parking & Traffic is still investigating the impact of an additional lane and may require additional work)